UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **March 19, 2018**

PENN NATIONAL GAMING, INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	**0-24206**	**23-2234473**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

825 Berkshire Blvd., Suite 200, Wyomissing, PA	**19610**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(610) 373-2400**

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

x Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Item 8.01 Other Events.

As previously announced, Penn National Gaming, Inc. ("Penn") entered into an Agreement and Plan of Merger, dated as of December 17, 2017 (the "Merger Agreement"), with Pinnacle Entertainment, Inc. ("Pinnacle") and Franchise Merger Sub, Inc., a wholly owned subsidiary of Penn ("Merger Sub"), providing for the merger of Merger Sub with and into Pinnacle (the "Merger"), with Pinnacle surviving the Merger as a wholly owned subsidiary of Penn.

This Form 8-K contains certain supplemental disclosures regarding the Merger.

Pending Pinnacle Stockholder Litigation.

As previously disclosed on page 133 of the definitive joint proxy statement/prospectus related to the Merger dated February 28, 2018 (the "Joint Proxy Statement/Prospectus") under the heading "Litigation Relating to the Merger," on February 21, 2018, a purported stockholder of Pinnacle filed a putative class action lawsuit against Pinnacle and its directors (together, the "Defendants") in the United States District Court for the District of Nevada, captioned *George Smith* v. *Pinnacle Entertainment, Inc., et al.*, Case No. 2:18-cv-00314 (D. Nev.). The complaint alleges that the Defendants violated

Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") because the preliminary Form S-4 filed with the Securities and Exchange Commission (the "Commission") allegedly contains material omissions and misstatements. The complaint seeks, among other things, injunctive relief preventing the consummation of the Merger until additional disclosures are made, and damages. The Defendants believe that the action is without merit.

In addition, after the filing of the Joint Proxy Statement/Prospectus, on March 2, 2018, a purported stockholder of Pinnacle filed a putative class action lawsuit against the Defendants in the United States District Court for the District of Nevada, captioned *Robert Ohigashi v. Pinnacle Entertainment, Inc., et al.*, Case 2:18-cv-00387 (D. Nev.). On March 7, 2018, a purported stockholder of Pinnacle filed a putative class actions lawsuit against the Defendants in the United States District Court for the District of Nevada, captioned *Adam Franchi v. Pinnacle Entertainment, Inc., et al.,* Case No. 2:18-cv-00415. Similar to the first complaint described above, the complaints filed on March 2, 2018 and March 7, 2018 allege that the Defendants violated Sections 14(a) and 20(a) of the Exchange Act because the preliminary Form S-4 filed with the Commission allegedly contains material omissions and misstatements. The complaints seek, among other things, injunctive relief preventing the consummation of the Merger until additional disclosures are made, and damages. The Defendants believe that these actions are also without merit. The Defendants believe that no further disclosure is required under applicable laws; however, to avoid the risk of the litigation delaying or adversely affecting the Merger and to minimize the expense of defending the litigation related to the Merger, the Defendants have agreed to make the supplemental disclosures related to the Merger as set forth herein. As a result of the supplemental disclosures set forth herein, the named plaintiffs in each of the pending lawsuits (*George Smith* v. *Pinnacle Entertainment, Inc., et al., Robert Ohigashi v. Pinnacle Entertainment, Inc., et al.* and *Adam Franchi v. Pinnacle Entertainment, Inc., et al.*) have concluded that the claims in each of the lawsuits have been mooted, have determined not to seek to enjoin the special meeting of Company stockholders to vote on the Merger, and will dismiss each lawsuit with prejudice. Nothing in this Form 8-K shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the supplemental disclosures set forth herein.

SUPPLEMENT TO JOINT PROXY STATEMENT/PROSPECTUS

Set forth below are supplemental disclosures to the Joint Proxy Statement/Prospectus. This supplemental information should be read in conjunction with the Joint Proxy Statement/Prospectus, which should be read in its entirety.

The penultimate sentence of the final paragraph on page 71 of the Joint Proxy Statement/Prospectus concerning the "Background of the Merger" is amended and supplemented by adding the following bolded and underlined text:

After discussion, the Pinnacle Board instructed management to contact Penn to obtain additional information regarding its proposal in the areas of regulatory, financing, third-party consents and diligence**, including information**

on Penn's willingness to commit to taking all necessary actions to obtain regulatory approvals, Penn's assumptions regarding the proposed divestitures, status of discussions between Penn and potential third party divestiture buyers, status of discussions between Penn and GLPI regarding GLPI's consent to the proposed transaction, status of any financing-related discussions with potential lenders and confirmation of the scope and timeline for completion of due diligence.

The second sentence of the second full paragraph on page 76 of the Joint Proxy Statement/Prospectus concerning the "Background of the Merger" is amended and supplemented by adding the following bolded and underlined text:

During the meeting, representatives of J.P. Morgan reviewed perspectives regarding the last proposal from Penn as well as strategic alternatives available to Pinnacle in addition to a transaction with Penn**, including pursuing Pinnacle's strategic plan on a standalone basis, pursuing a sale of Pinnacle to a buyer other than Penn or pursuing potential acquisitions.**

The second sentence of the second full paragraph on page 80 of the Joint Proxy Statement/Prospectus concerning the "Background of the Merger" is amended and supplemented by adding the following bolded and underlined text:

During the meeting, Mr. Sanfilippo provided an update on his communications with Penn and Mr. Ruisanchez provided an update on the status of a strategic buy-side opportunity **in the gaming industry** being considered by Pinnacle.

The table on page 96 of the Joint Proxy Statement/Prospectus concerning "Certain Pinnacle Unaudited Prospective Financial Information — Pinnacle Management Projections of Pinnacle Financial Information" is amended and restated by deleting the following strikethrough text and adding the following bolded and underlined text:

	Forecasts (1)					Extrapolations (2)				
$mm	**2017E***	**2018E**	**2019E**	**2020E**	**2021E**	**2022E**	**2023E**	**2024E**	**2025E**	**2026E**
Net revenue	2,565	2,629	2,678	2,730	2,782	2,834	2,884	2,932	2,979	3,023
EBITDAR (4)	705(3)	723	745	769	793	808	822	836	849	862
(-) Consolidated rent expenses	**(103)**	**(412)**	**(418)**	**(427)**	**(436)**	**(444)**	**(453)**	**(462)**	**(471)**	**(480)**
EBITDA (5)	298(3)	311	326	341	358	364	369	374	378	382
(-) Taxes	**(5)**	**(22)**	**(40)**	**(65)**	**(65)**	**(68)**	**(71)**	**(74)**	**(77)**	**(79)**
(-) Total capital expenditures and Other (6)	**(34)**	**(101)**	**(131)**	**(172)**	**(107)**	**(109)**	**(111)**	**(114)**	**(116)**	**(118)**
(+/-) Δ NWC	**43**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Unlevered Free Cash Flow **(assuming 35% federal income tax rate) ~~(7)~~(8)**	66~~(6)~~ **(7)**	188	155	104	185	186	187	187	186	185
Unlevered Free Cash Flow (assuming 21% federal income tax rate) (9)	**67(7)**	**192**	**162**	**126**	**207**	**209**	**211**	**212**	**212**	**212**

Source: Pinnacle management

*Net revenue, EBITDAR and EBITDA for 2017 are presented as ~~Represents~~ actual figures through end of October 2017, excluding potential future adjustments for 2017, and forecast for the remainder of 2017**, and all other entries for 2017 are presented only for the fourth quarter of 2017.**

(1) Selected measures from the Pinnacle Projections from 2017E through 2021E prepared by Pinnacle management and provided to J.P. Morgan (other than Unlevered Free Cash Flow, as described in ~~Note 7~~ **Notes 8 and 9** below) in connection with J.P. Morgan's financial analyses summarized under "The Merger —Opinion of Pinnacle's Financial Advisor" and to the Pinnacle Board in connection with its evaluation of the Merger.

(2) Extrapolations for 2022E through 2026E approved by Pinnacle management, based on Pinnacle management

estimates for 2017E through 2021E, and provided to J.P. Morgan in connection with its financial analyses summarized under "The Merger—Opinion of Pinnacle's Financial Advisor" and to the Pinnacle Board in connection with its evaluation of the Merger.

(3) Excluding non-recurring expenses of $7.4 million.

(4) EBITDAR is defined for purposes of the Pinnacle Projections as earnings before interest income and expense, income taxes, depreciation, amortization, rent expense associated with the Meadows lease, pre-opening, development and other costs, non-cash share-based compensation, asset impairment costs, write-downs, reserves, recoveries, gain (loss) on sale of certain assets, loss on early extinguishment of debt, gain (loss) on sale of equity security investments, income (loss) from equity method investments, non-controlling interest and discontinued operations. EBITDAR is a non-GAAP financial measure and should not be considered as an alternative to operating income or net income as a measure of operating performance or as an alternative to any other measure provided in accordance with GAAP.

(5) EBITDA is defined for purposes of the Pinnacle Projections as EBITDAR (as defined in Note 4 above) less rent payments associated with Pinnacle's master lease with GLPI and less rent payments associated with the Meadows lease. EBITDA is a non-GAAP financial measure and should not be considered as an alternative to operating income or net income as a measure of operating performance or as an alternative to any other measure provided in accordance with GAAP.

(6) **Other includes pre-opening and development costs, stock-based compensation, net asset write-downs and other investing activities.**

(7) Reflects Unlevered Free Cash Flow forecast for the fourth fiscal quarter of 2017.

(8) Unlevered Free Cash Flow is defined as EBITDA (as defined in Note 5 above), less tax expenses (on an unlevered basis), less capital expenditures, less other investing activities, less pre-opening and development costs, stock-based compensation and net asset write-downs and less changes in net working capital. Unlevered Free Cash Flow is a non-GAAP financial measure and was calculated by J.P. Morgan in connection with its discounted cash flow analysis based on the Pinnacle Projections (assuming a statutory federal income tax rate of 35% applicable to Pinnacle).

(9) Unlevered Free Cash Flow in this row was calculated by J.P. Morgan in connection with its discounted cash flow analysis based on the Pinnacle Projections (assuming a statutory federal income tax rate of 21% applicable to Pinnacle).

The table on page 98 of the Joint Proxy Statement/Prospectus concerning "Certain Pinnacle Unaudited Prospective Financial Information — Pinnacle Projections Regarding Penn" is amended and restated by deleting the following strikethrough text and adding the following bolded and underlined text:

	Forecasts (1)						Extrapolations (2)			
$mm	**3M2017E***	**2018E**	**2019E**	**2020E**	**2021E**	**2022E**	**2023E**	**2024E**	**2025E**	**2026E**
Net revenue	757	3,243	3,220	3,215	3,283	3,348	3,411	3,470	3,527	3,580
EBITDAR (3)	206	919	947	940	954	973	991	1,008	1,025	1,040
(-) Consolidated rent expenses	**(114)**	**(461)**	**(458)**	**(465)**	**(471)**	**(480)**	**(490)**	**(499)**	**(509)**	**(519)**
EBITDA (4)	92	457	489	475	483	493	501	509	516	521
(-) Stock-based compensation	**(2)**	**(8)**	**(8)**	**(8)**	**(8)**	**(8)**	**(8)**	**(8)**	**(9)**	**(9)**
(-) Taxes	**6**	**(86)**	**(92)**	**(94)**	**(103)**	**(113)**	**(122)**	**(131)**	**(140)**	**(148)**
(-) Total capital expenditures and Other (5)	**(37)**	**(131)**	**(117)**	**(126)**	**(128)**	**(118)**	**(120)**	**(102)**	**(104)**	**(104)**
(+/-) Δ NWC	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Unlevered Free Cash Flow ~~(5)~~**(6)**	59	233	272	247	244	254	251	267	263	262

Source: Pinnacle management

*Represents forecast for fourth fiscal quarter of 2017 only and does not include actual figures for 2017.

(1) Selected measures from the Adjusted Penn Projections from 2017E through 2021E approved by Pinnacle management and provided to J.P. Morgan (other than Unlevered Free Cash Flow, as described in Note ~~5~~**6** below) in connection with J.P. Morgan's financial analyses summarized under "The Merger—Opinion of Pinnacle's Financial Advisor" and to the Pinnacle Board in connection with its evaluation of the Merger.

(2) Extrapolations for 2022E through 2026E approved by Pinnacle management, based on Penn management estimates for calendar years 2017 through 2021 as adjusted by Pinnacle management, and provided to J.P. Morgan in connection with J.P. Morgan's financial analyses summarized under "The Merger—Opinion of Pinnacle's Financial Advisor" and to the Pinnacle Board in connection with its evaluation of the Merger.

(3) EBITDAR is defined for purposes of the Adjusted Penn Projections as earnings before interest income and expense, income taxes, depreciation, amortization, pre-opening, development and other costs, non-cash share-based compensation, asset impairment costs, write-downs, reserves, recoveries, gain (loss) on sale of certain assets, loss on early extinguishment of debt, gain (loss) on sale of equity security investments, income (loss) from equity method investments, non-controlling interest and discontinued operations. EBITDAR is a non-GAAP financial measure and should not be considered as an alternative to operating income or net income as a measure of operating performance or as an alternative to any other measure provided in accordance with GAAP.

(4) EBITDA is defined for purposes of the Adjusted Penn Projections as EBITDAR (as defined above) less cash rent expenses.

(5) **Other includes other cash items including Ohio track relocation fees, Jamul (advances)/proceeds, earnout payments and capital lease payments.**

(6) Unlevered Free Cash Flow is defined for purposes of the Adjusted Penn Projections as EBITDA (as defined in Note 4 above), less tax expenses (on an unlevered basis), less capital expenditures, less other cash items (including Ohio track relocation fees, Jamul (advances) proceeds, earnout payments and capital lease payments), less stock-based compensation, less changes in net working capital and less certain other items. Unlevered Free Cash Flow is a non-GAAP financial measure and was calculated by J.P. Morgan in connection with its discounted cash flow analysis based on the Adjusted Penn Projections (assuming a statutory federal income tax rate of 35% applicable to Penn).

The first paragraph on page 106 of the Joint Proxy Statement/Prospectus concerning the "Opinion of Pinnacle's Financial Advisor" is amended and restated in its entirety by deleting the following strikethrough text and adding the following bolded and underlined text:

Pursuant to an engagement letter dated December 11, 2017, Pinnacle ~~formally retained~~ **formalized its arrangements with** J.P. Morgan, **which had served** as **Pinnacle's** ~~its~~ financial advisor in connection with the merger **since early 2017**.

The following sentence is added after the first sentence of the fourth paragraph on page 108 of the Joint Proxy Statement/Prospectus concerning the "Opinion of Pinnacle's Financial Advisor — Public Trading Multiples":

The foregoing calculations produced trading multiples of 6.9x and 7.5x for Pinnacle and Penn, respectively, based on equity research analyst estimates, and 7.0x for Pinnacle based on management projections.

The first sentence of the third paragraph on page 109 of the Joint Proxy Statement/Prospectus concerning the "Opinion of Pinnacle's Financial Advisor — Discounted Cash Flow Analysis" is amended and restated in its entirety by adding the following bolded and underlined text:

J.P. Morgan calculated the unlevered free cash flows that Pinnacle is expected to generate during fiscal years 2017 through 2021, which were based upon financial projections prepared by the management of Pinnacle and upon extrapolations reviewed and approved by the management of Pinnacle for the fiscal years 2022 through 2026 under both existing tax rates and as adjusted for a reduction in Federal tax rates to 21% under then-proposed legislation**, and in each case excluding synergies**.

The third sentence of the third paragraph on page 109 of the Joint Proxy Statement/Prospectus concerning the "Opinion of Pinnacle's Financial Advisor — Discounted Cash Flow Analysis" is amended and restated in its entirety by deleting the following strikethrough text and adding the following bolded and underlined text:

For purposes of the foregoing analysis, the unlevered free cash flows in the terminal year were calculated by J.P. Morgan to be $164 million (assuming then-current tax rates)**, with a range of implied terminal exit multiples of 5.7x to 7.0x** and $201 million (assuming Federal tax rate of 21%), **with a range of implied terminal exit multiples of 6.7x to 8.2x,** in each case based on the projections provided by Pinnacle's management.

The following sentence is added to the end of the paragraph on page 121 of the Joint Proxy Statement/Prospectus concerning the "Interests of Certain Pinnacle Directors and Executive Officers in the Merger — Arrangements with Penn":

Prior to the signing of the merger agreement, neither Pinnacle's Chief Executive Officer nor its President and Chief Financial Officer had discussions with Penn regarding arrangements or agreements for employment following the effective time. In addition, prior to the signing of the merger agreement, none of Pinnacle's directors had discussions with Penn regarding possible directorships with the combined company.

—END OF SUPPLEMENT TO JOINT PROXY STATEMENT/PROSPECTUS—

Pending Penn Shareholder Litigation.

On March 6, 2018, Penn received a letter dated March 5, 2018 on behalf of purported Penn shareholder Robert Garfield ("Garfield") demanding that Penn file suit against the members of the board of directors of Penn (the "Penn board"). The letter alleged, among other things, that the board members breached fiduciary duties in connection with the entry into the Merger Agreement, and through causing Penn to make allegedly materially inadequate disclosures and material omissions in the Joint Proxy Statement/Prospectus. On March 9, 2018, Garfield filed a putative derivative and purported class action lawsuit captioned *Garfield* v. *Carlino*, No. 18-2652, in the Court of Common Pleas of Berks County, Pennsylvania against members of the Penn board, with Penn as a nominal defendant, alleging several claims under Pennsylvania law based on substantially the same allegations raised in his letter. On March 13, 2018, the Penn board appointed an independent special litigation committee to review, investigate, and evaluate the claims on behalf of Penn. On March 16, 2018, Garfield filed a motion for a preliminary injunction and expedited discovery. The defendants believe that the action is without merit. A copy of the complaint is attached as Exhibit 99.1 hereto and incorporated by reference herein.

Important Additional Information

In connection with the proposed transaction, on February 8, 2018, Penn filed with the Securities and Exchange Commission (the "SEC") a registration statement on Form S-4 that contains a joint proxy statement of Penn and Pinnacle and also constitutes a prospectus of Penn (the "joint proxy statement/prospectus"). The registration statement was declared effective by the SEC on February 28, 2018 and Penn and Pinnacle commenced mailing the definitive joint proxy statement/prospectus to their respective shareholders and stockholders on February 28, 2018. This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval. SHAREHOLDERS OF PENN AND STOCKHOLDERS OF PINNACLE ARE URGED TO READ THE DEFINITIVE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE PROPOSED TRANSACTION AND ANY OTHER RELEVANT DOCUMENTS FILED OR THAT WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THOSE DOCUMENTS, BECAUSE THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION. Investors may obtain a free copy of the registration statement and the joint proxy statement/prospectus, as well as other filings containing information about Penn and Pinnacle, without charge, at the SEC's website at www.sec.gov. Copies of the documents filed with the SEC by Penn can be obtained, without charge, by directing a request to Justin Sebastiano, Penn National Gaming, Inc., 825 Berkshire Boulevard, Suite 200, Wyomissing, Pennsylvania 19610, Tel. No. (610) 401-2029. Copies of the documents filed with the SEC by Pinnacle can be obtained, without charge, by directing a request to Vincent Zahn, Pinnacle Entertainment, Inc., 3980 Howard Hughes Parkway, Las Vegas, Nevada 89169, Tel. No. (702) 541-7777.

Participants in the Solicitation

Penn, Pinnacle, and certain of their respective directors, executive officers and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding Penn's directors and executive officers is available in Penn's Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on March 1, 2018, and its proxy statement for its 2017 Annual Meeting of Shareholders, which was filed with the SEC on April 25, 2017. Information regarding Pinnacle's directors and executive officers is available in Pinnacle's Annual Report on Form 10-K for the year ended December 31, 2017, which was filed with the SEC on March 1, 2018, and its proxy statement for its 2017 Annual Meeting of Stockholders, which was filed with the SEC on March 14, 2017. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, is contained in the definitive joint proxy statement/prospectus of Penn and Pinnacle and other relevant materials filed with the SEC. Free copies of this document may be obtained as described in the preceding paragraph.

Forward-Looking Statements

This communication may contain certain forward-looking statements, including certain plans, expectations, goals, projections, and statements about the benefits of the proposed transaction, Penn's and Pinnacle's plans, objectives, expectations and intentions, the expected timing of completion of the transaction, and other statements that are not historical facts. Such statements are subject to numerous assumptions, risks, and uncertainties. Statements that do not describe historical or current facts, including statements about beliefs and expectations, are forward-looking statements. Forward-looking statements may be identified by words such as "expect," "anticipate," "believe," "intend," "estimate," "plan," "target," "goal," or similar expressions, or future or conditional verbs such as "will," "may," "might," "should," "would," "could," or similar variations. The forward-looking statements are intended to be subject to the safe harbor provided by Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934, and the Private Securities Litigation Reform Act of 1995.

While there is no assurance that any list of risks and uncertainties or risk factors is complete, below are certain factors which could cause actual results to differ materially from those contained or implied in the forward-looking statements including: risks related to the acquisition of Pinnacle by Penn and the integration of the businesses and assets to be acquired; the possibility that the proposed transaction does not close when expected or at all because required regulatory, shareholder or other approvals are not received or other conditions to the closing are not satisfied on a timely basis or at all; the risk that the financing required to fund the transaction is not obtained on the terms anticipated

or at all; the possibility that the Boyd Gaming Corporation and/or Gaming and Leisure Properties, Inc. transactions do not close in a timely fashion or at all; potential adverse reactions or changes to business or employee relationships, including those resulting from the announcement or completion of the transaction; potential litigation challenging the transaction; the possibility that the anticipated benefits of the transaction are not realized when expected or at all, including as a result of the impact of, or issues arising from, the integration of the two companies; the possibility that the anticipated divestitures are not completed in the anticipated timeframe or at all; the possibility that additional divestitures may be required; the possibility that the transaction may be more expensive to complete than anticipated, including as a result of unexpected factors or events; diversion of management's attention from ongoing business operations and opportunities; litigation relating to the transaction; risks associated with increased leverage from the transaction; and other factors discussed in the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Penn's and Pinnacle's respective most recent Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K as filed with the SEC. Other unknown or unpredictable factors may also cause actual results to differ materially from those projected by the forward-looking statements. Most of these factors are difficult to anticipate and are generally beyond the control of Penn and Pinnacle. Pinnacle does not undertake any obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events unless required to do so by law.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
99.1	Complaint filed by Robert Garfield on March 9, 2018 in the Court of Common Pleas of Berks County, Pennsylvania.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PENN NATIONAL GAMING, INC.

Dated: March 19, 2018

By: /s/ William J. Fair

Name: William J. Fair

Title: Executive Vice President and Chief Financial Officer

No. 18-2652

BRUBAKER CONNAUGHTON GOSS & LUCARELLI LLC
By: Rory O. Connaughton, Esquire
Attorney I.D. No. 78775
Maria A. Cusick, Esquire
Attorney I.D. No. 312002
480 New Holland Avenue, Suite 6205
Lancaster, PA 17602
717/945-5756 (phone) 717/945-5764 (fax)
Counsel for Plaintiff
Counsel of Record for this Party

ROBERT GARFIELD, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
PLAINTIFF,	:	CIVIL DIVISION
	:	NO. 18-2652
-AGAINST-	:	
	:	**SHAREHOLDER CLASS ACTION AND DERIVATIVE COMPLAINT**
PETER M. CARLINO, DAVID A. HANDLER, JOHN M. JACQUEMIN, BARBARA SHATTUCK KOHN, RONALD J. NAPLES, JANE SCACCETTI, AND TIMOTHY J. WILMOTT,	:	**JURY TRIAL DEMANDED**
DEFENDANTS,	:	
-AND-	:	
PENN NATIONAL GAMING INC.,	:	
NOMINAL DEFENDANT.	:	

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 lose money or property or other rights important to you.

No. _____

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, 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.

LAWYER REFERRAL SERVICE
BERKS COUNTY BAR ASSOCIATION
544 COURT STREET
READING, PA 19603
TELEPHONE: (610) 375-4591

BRUBAKER CONNAUGHTON GOSS & LUCARELLI LLC

Date: 3/9/18 By: _____

Rory O. Connaughton, Esquire
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Maria A. Cusick, Esquire
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No. _____

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Counsel for Plaintiff
Counsel of Record for this Party

ROBERT GARFIELD, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,	:	IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
PLAINTIFF,	:	CIVIL DIVISION
-AGAINST-	:	NO. _____
PETER M. CARLINO, DAVID A. HANDLER, JOHN M. JACQUEMIN, BARBARA SHATTUCK KOHN, RONALD J. NAPLES, JANE SCACCETTI, AND TIMOTHY J. WILMOTT,	:	**SHAREHOLDER CLASS ACTION AND DERIVATIVE COMPLAINT** **JURY TRIAL DEMANDED**
DEFENDANTS,	:	
-AND-	:	
PENN NATIONAL GAMING INC.,	:	
NOMINAL DEFENDANT.	:	

COMPLAINT

Plaintiff, by his attorneys, alleges for his Class Action and Derivative Complaint, upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a shareholder class action (the "Action") brought under

Pennsylvania law by Plaintiff Robert Garfield, a shareholder of Penn National Gaming Inc. ("Penn" or the "Company"), on behalf of himself and other Penn shareholders, against the members of Penn's board of directors (the "Individual Defendants" or the "Board"). This is also a derivative action brought by Plaintiff on behalf of Defendant Penn against the same Defendants.

2. The Action arises from Defendants' actions in causing Penn to agree to purchase Pinnacle Entertainment, Inc. ("Pinnacle") (the "Merger") pursuant to an agreement entered into on December 17, 2017 (the "Merger Agreement") which benefits Penn's management and its Board, but is to the detriment of Penn, the Plaintiff, and Penn's other public shareholders. Pursuant to the Merger Agreement, Penn will acquire all of the outstanding shares of Pinnacle common stock for $32.47 per share – consisting of the issuance of 0.42 shares of Penn common stock (the "Share Issuance") and $20.00 in cash per share of Pinnace common stock. A copy of The Merger Agreement is attached as Exhibit A and incorporated by reference. Plaintiff challenges the Merger and the related issuance of additional Penn shares to finance the Merger because each is the product of, or tainted by fraud or fundamental unfairness.

3. As alleged herein, the Merger was not in the best interests of Penn shareholders because:

- Penn is paying a 113% premium for Pinnacle, overpaying by over $1.58 billion;
- The premium is in excess of the synergy value projected by Defendants to accrue to Penn shareholders from the Merger meaning that Penn is overpaying for Pinnacle, even assuming the accuracy of the Individual Defendants'

synergy valuation;

- Penn is also anticipated to take on approximately $4.2 billion in debt plus financing obligations in connection with the Merger;
- The post-merger company will be significantly leveraged, at a time where interest rates are rising and the economy could potentially be on the cusp of a recession;
- Penn has arranged for approximately $1.98 billion of the debt needed to finance the Merger through Goldman Sachs & Co. LLC ("Goldman Sachs"), the same firm it selected to render a purportedly unbiased opinion regarding the fairness of the Merger to Penn shareholders, and others;
- To partially finance the Merger, in addition to the debt financing described herein, the Defendants are causing Penn to divest itself of valuable assets for $575 million in cash, then entering into agreements to lease such assets back for $315 million.
- Goldman Sachs is not unbiased, however, because most of its compensation --- over $22.5 million --- is contingent on the consummation of the Merger (and it is expected to earn as much as $7.1 million for the provision of financing), and
- The issuance of new shares of Penn's stock to Pinnacle's shareholders will substantially dilute current Penn shareholders voting rights and ownership, by reducing such ownership and voting rights from 100% to 78%.

4. As Plaintiff further alleges below, Penn's directors were motivated to cause Penn to enter into the Merger Agreement by their own self-interest. In this regard, the compensation of Penn's other board members, which is extremely excessive --- over $300,000 per year on average --- for what is at most a part time job, is determined by, among other things, reference to the size of the compensation of directors of similarly sized "peer companies." For this reason, each of Penn's board

members will personally benefit from the Merger Agreement because an increase in Penn's size will place Penn and its directors in a higher paying peer group.

5. In order to persuade Penn's shareholders to approve such an unfavorable merger and the highly dilutive Share Issuance, the Individual Defendants disseminated a prospectus which concealed the conflicts of interest of Defendants' purported independent financial advisor, Goldman Sachs, so as not to discredit its recommendation of the Merger to Penn's shareholders. While the Registration Statement touts Goldman Sachs' opinion that the price Penn is paying for Pinnacle is "fair," it does not disclose that *Goldman Sachs is itself a Pinnacle shareholder*, holding over $10 million worth of Pinnacle stock (more than double the amount of Pinnacle stock it held when it started advising Pinnacle on the Merger). To the contrary, the Prospectus does not even acknowledge that Goldman Sachs is a Pinnacle shareholder. Rather, it misleadingly states that Goldman Sachs "may" (or may not) own Pinnacle shares. A copy of the Prospectus is attached hereto as Annex A to Exhibit A and incorporated by reference.

JURISDICTION

6. This Court has jurisdiction over this action because it is the Court of general jurisdiction for Berks County where Penn is headquartered. Moreover, as alleged in more detail *infra*, this Court has jurisdiction over each of the Defendants pursuant to 42 Pa.C.S. § § 5301 and 5322(a)(7)(iv) because they serve as directors and/or officers of a corporation incorporated under the laws of Pennsylvania, conduct business in, reside in, are citizens of, or directed their wrongful conduct at,

Pennsylvania.

7. Venue is proper in this Court pursuant to Pa. R.C.P. Rule 2179(a)(1) because Penn's principal place of business in Pennsylvania is located in Berks County at 825 Berkshire Boulevard, Suite 200, Wyomissing, PA 19610.

8. This Action challenges the internal affairs or governance of Penn under Pennsylvania law and hence is not removable to Federal Court under the Class Action Fairness Act of 2005 or the Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. § 78bb(f).

PARTIES

9. Plaintiff Robert Garfield is a native of Pennsylvania who lived here (except for the years 1962 to 1969 when he was in the Air Force) his entire life, until he semi-retired and moved to Florida several years ago. Plaintiff Garfield graduated from Grove City College, where he received a Bachelor of Science Degree. Plaintiff Garfield now spends a portion of his retirement time managing his retirement portfolio, including an investment in Penn. Plaintiff Garfield has continuously owned Penn common stock since on or about October 12, 2015.

10. Nominal Defendant Penn is a Pennsylvania corporation with its registered address located in Berks County at 825 Berkshire Boulevard, Suite 200, Wyomissing, PA 19610. Penn is a multi-jurisdictional owner and manager of gaming and racing facilities and video gaming terminal operations with a focus on slot machine entertainment. Penn's common stock is listed on the NASDAQ under the symbol "Penn." This Court has jurisdiction over Penn because Penn is incorporated

under the laws of, and headquartered in, this Commonwealth.

11. Defendant Timothy J. Wilmott ("Mr. Wilmott" or "CEO Wilmott") has served as a director of Penn since 2014. He also serves as Chief Executive Officer ("CEO") of Penn since 2013 and as Chief Operating Officer ("COO") since 2008. Further, CEO Wilmott also served as President of Penn from February 2008 to March 2017. In 2016, Mr. Wilmott received total compensation valued at $6,163,317.00 for serving as a Penn executive which amount was derived in part from reference to the compensation of CEOs of similarly sized corporations. This Court has jurisdiction over Mr. Wilmott because Penn is headquartered in this Commonwealth and because his improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

12. Defendant Peter M. Carlino ("Mr. Carlino" or "Chairman Carlino") has served as Penn's Chairman of the Board since April 1994 and served as the Company's CEO from 1994 to 2013. In 2016, Chairman Carlino received total compensation valued at $425,006.00 for serving as a Penn director and Chairman of the Board. The amount of Mr. Carlino's compensation was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations. Nonetheless, compensation of this magnitude solely for serving as a part-time board member is neither usual nor customary. This Court has jurisdiction over Mr. Carlino because Penn is headquartered in this Commonwealth and because his improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

13. Defendant David A. Handler ("Mr. Handler") has served as a director of Penn since 1994. In 2016, Mr. Handler received total compensation valued at $310,000.00 for his part-time service as a Penn director. The amount of Mr. Handler's compensation was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations. Nonetheless, compensation of this magnitude solely for serving as a part-time board member is neither usual nor customary. This Court has jurisdiction over Mr. Handler because Penn is headquartered in this Commonwealth and because his improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

14. Defendant John M. Jacquemin ("Mr. Jacquemin") has served as a director of Penn since 1995. In 2016, Mr. Jacquemin received total compensation valued at $310,000.00 for his part-time service as a Penn director. The amount of Mr. Jacquemin's compensation was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations. Nonetheless, compensation of this magnitude solely for serving as a part-time board member is neither usual nor customary. This Court has jurisdiction over Mr. Jacquemin because Penn is headquartered in this Commonwealth and because his improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

15. Defendant Barbara Shattuck Kohn ("Ms. Kohn") has served as a director of Penn since 2004. In 2016, Ms. Kohn received total compensation valued at

$320,000.00 for her part-time service as a Penn director. The amount of Ms. Kohn's compensation was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations. Nonetheless, compensation of this magnitude solely for serving as a part-time board member is neither usual nor customary. This Court has jurisdiction over Ms. Kohn because Penn is headquartered in this Commonwealth and because her improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

16. Defendant Ronald J. Naples ("Mr. Naples") has served as a director of Penn since June 2013. In 2016, Mr. Naples received total compensation valued at $310,000.00 for his part-time service as a Penn director. The amount of Mr. Naples' compensation was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations. Nonetheless, compensation of this magnitude solely for serving as a part-time board member is neither usual nor customary. This Court has jurisdiction over Mr. Naples because Penn is headquartered in this Commonwealth and because his improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

17. Defendant Jane Scaccetti ("Ms. Scaccetti") has served as a director of Penn since 2015. In 2016, Ms. Scaccetti received total compensation valued at $310,000.00 for her part-time service as a Penn director. The amount of Ms. Scaccetti's compensation was determined and/or justified in part by reference to the

compensation of directors of similarly sized corporations. Nonetheless, compensation of this magnitude solely for serving as a part-time board member is neither usual nor customary. This Court has jurisdiction over Ms. Scaccetti because Penn is headquartered in this Commonwealth and because her improper conduct alleged in this Complaint occurred in substantial part, was directed at, and/or intended to have its primary effect in, this Commonwealth.

DERIVATIVE AND CLASS ACTION ALLEGATIONS

18. Plaintiff brings this Action as a derivative action on behalf of and for the benefit of Penn pursuant to Pa. R.C.P. Rule 1506.

19. On February 28, 2017 Defendants mailed the prospectus which revealed the true extent of their wrongdoing. Thereafter, three business days later on March 5, 2018, Plaintiff made a demand upon Penn's Board, demanding that the Individual Defendants institute a lawsuit asserting the claims alleged herein on behalf of Penn against the Defendants (the "Demand Letter"). The Board has yet to take appropriate legal action against the Company's directors and any other individuals responsible for causing the substantial harm to Penn as described herein. Further, the Defendants have scheduled the consummation of a shareholder vote on the Share Issuance for March 29, 2018. In light of the eminent harm that will ensure if the vote is consummated, Plaintiff commences this action.

20. Plaintiff also brings this Action as a class action pursuant to Pa. R.C.P. 1702 *et seq.* on behalf of himself and all public common stock holders of the Company. Excluded from the Class are (1) Defendants, members of the immediate families of

the Defendants, their heirs and assigns, and those in privity with them, (2) holders of 5% or more, in the aggregate, of Penn's stock and their Related Persons (as defined by SEC rules), and (3) Sean Griffith and any other shareholder who purchased his, her or its shares solely for the purpose of objecting to any potential settlement of this action.

21. The members of the Class are so numerous that joinder of all of them would be impracticable. As of March 1, 2018, the Company had approximately 91 million shares of common stock outstanding held by 433 holders of record, and thousands of beneficial owners.

22. There are questions of law and fact common to the members of the Class, including whether:

(a) the Individual Defendants engaged in self-dealing in connection with the Merger;

(b) the Individual Defendants were motivated by self-dealing to enhance their personal compensation;

(c) the Prospectus is false, misleading and incomplete;

(d) Defendants misrepresented their financial advisor's conflicts of interest;

(e) the Merger is the product of, or tainted by, fraud or fundamental unfairness;

(f) the Individual Defendants are unjustly enriching themselves at the expense of Plaintiff and the Class;

(g) the Individual Defendants wrongfully and for improper motives impeded the procurement of an accurate and unbiased fairness opinion regarding the consideration being paid to Pinnacle's shareholders;

(h) the consideration being paid to Pinnacle's shareholders is unfair;

(i) the Individual Defendants are unfairly diluting the shareholdings of Plaintiff and the Class;

(j) the Share Issuance and Merger are unfair, inadequate, unreasonable, and/or not in the best interests of Plaintiff and the Class;

(k) Defendants abridged the right of Plaintiff and the Class to vote on the Share Issuance an informed basis;

(l) Plaintiff and the Class have been damaged and the proper measure of damages;

(m) whether, and the amount by which, the Individual Defendants have been unjustly enriched.

23. Plaintiff will fairly and adequately assert and protect the interests of the Class under the criteria set forth in Pa. R.C.P. 1709. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel competent and experienced in this type of litigation. Plaintiff's counsel is experienced in this type of litigation and will adequately represent the interests of the Class. Plaintiff does not have any conflicts of interest in the maintenance of the class action. Plaintiff has or

can acquire adequate financial resources to assure that the interests of the Class will not be harmed.

24. A class action provides a fair and efficient method for adjudication of this controversy under the criteria set forth in Pa. R.C.P. 1708. Common questions of law or fact predominate over any question affecting only individual members. Plaintiff anticipates no difficulty in the management of the action as a class action. Further, the prosecution of separate actions by or against individual members of the class would create a risk of (i) inconsistent or varying adjudications with respect to individual members of the Class which would confront the party opposing the class with incompatible standards of conduct, and (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

25. This Court is appropriate for the litigation of the claims of the entire Class since Penn is incorporated in Pennsylvania and Penn's registered business address is located in Berks County.

26. The parties opposing the Class have acted or refused to act on grounds generally applicable to the Class, thereby making final equitable or declaratory relief appropriate with respect to the Class.

SUBSTANTIVE ALLEGATIONS

A. Penn's Directors Caused Penn to Agree to Merge with Pinnacle to Serve Their Own Benefits to the Detriment of the Company's Public Shareholders

27. On December 18, 2017, the Individual Defendants caused Penn to announce that it and Pinnacle had entered into the Merger Agreement under which Penn will acquire all of the outstanding shares of Pinnacle common stock for approximately $32.47 per share – consisting of $20.00 in cash and 0.42 of a share of Penn common stock per share of Pinnacle common stock. In connection with the Merger, Penn is also anticipated to take on approximately $4.2 billion in debt plus financing obligations. Upon consummation of the Merger, the combined company will become a significantly larger company, and the Individual Defendants will be able to justify increasing their already excessive compensation.

28. As further alleged herein, Penn's directors were motivated to cause Penn to enter into the Merger Agreement by their own self-interest in increasing their personal compensation. In this regard, the compensation of both CEO Wilmott as well as the other members of the Board is set through comparison to the compensation of the CEO's and board members of peer companies. Thus, as Penn grows, so too does the compensation of Mr. Wilmott and the members of its Board. Here, the Merger significantly increases Penn in size, thus leading to a concomitant increase in compensation for CEO Wilmott and the other members of the Board. As one article has noted:

> It is well-known that one of the variables most highly correlated with . . . compensation is the size of the company. It doesn't matter whether company size is measured as assets, market value, sales revenue or number of employees — bigger firms pay more ... way more.

29. In his recent letter to shareholders to Berkshire Hathaway, Warren Buffet concurred, noting as follows:

> Once a CEO hungers for a deal, he or she will never lack for forecasts that justify the purchase. Subordinates will be cheering, envisioning enlarged domains **and the compensation levels that typically increase with corporate size. Investment bankers, smelling huge fees, will be applauding as well.** (Don't ask the barber whether you need a haircut.) If the historical performance of the target falls short of validating its acquisition, large "synergies" will be forecast. Spreadsheets never disappoint.

Warren Buffett, *Letter to Berkshire Hathaway Shareholders*, BERKSHIRE HATHAWAY (February 24, 2018) http://www.berkshirehathaway.com/letters/2017ltr.pdf.

30. Thus, the Individual Defendants have a strong personal financial incentive to pursue the Merger, no matter the cost to Penn shareholders or unprofitability, in order to achieve their increased compensation and status in the industry.

31. In 2016, Defendant Wilmott received total compensation of $6,163,317.00 for serving as Penn's CEO, which was determined and/or justified in part by reference to the compensation of CEOs of similarly sized corporations.

32. In 2016, Defendant Carlino received total compensation of $425,006.00 for part time service as a Penn director and chairman of the board, which was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations, for serving as a part-time board member of Penn.

33. In 2016, Defendant Handler received total compensation of $310,000.00, which was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations, for serving as a part-time board member of Penn.

34. In 2016, Defendant Jacquemin received total compensation of $310,000.00, which was determined and/or justified in part by reference to the

compensation of directors of similarly sized corporations, for serving as a part-time board member of Penn.

35. In 2016, Defendant Kohn received total compensation of $320,000.00, which was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations, for serving as a part-time board member of Penn.

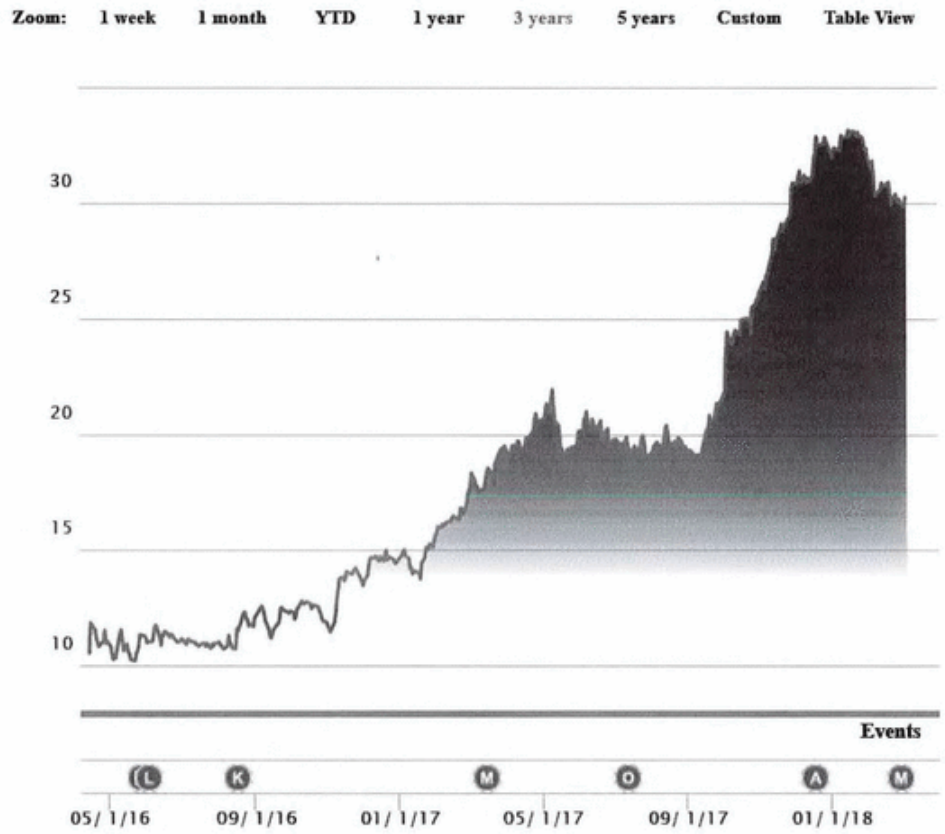
36. In 2016, Defendant Naples received total compensation of $310,000.00, which was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations, for serving as a part-time board member of Penn.

37. In 2016, Defendant Scaccetti received total compensation of $310,000.00, which was determined and/or justified in part by reference to the compensation of directors of similarly sized corporations, for serving as a part-time board member of Penn.

B. <u>The Individual Defendants are Causing Penn To Grossly Overpay For Pinnacle</u>

38. While the Pinnacle acquisition personally benefits the Individual Defendants, the acquisition is to the detriment of Penn shareholders because the Individual Defendants are causing Penn to grossly overpay for Pinnacle. In this regard, as the below graph demonstrates, in the five years prior to September 2017, Pinnacle's stock regularly traded below $20 per share. Indeed, in the year prior to September 2017, at a time when the stock market was booming, it traded at an

average price of $15.24 per share.[1] Thus, by paying approximately $32.47 per Pinnacle share, Penn is significantly overpaying for Penn by approximately $1.58 billion.



C. The Merger Is Highly Dilutive of Penn's Shareholders' Voting Rights and Ownership Interests

[1] The bump in Pinnacle's stock price in September 2017 appear to be the result of the news that Pinnacle's CEO and Chairman, Anthony Michael Sanfillipo, had purchased over 21,000 shares of Pinnacle's stock. The upward trajectory of Pinnacle's share price continued into the fall of 2017 as speculation regarding a potential merger with Penn permeated the market.

39. Additionally, Penn shareholders will have had their ownership percentage of the Company significantly diluted without receiving appropriate consideration. Specifically, following consummation of the Merger Agreement, current Penn shareholders will only own approximately 78% of the surviving company. As a result of the Pinnacle acquisition, Penn shareholders will have substantially less influence and control on the management and policies of Penn.

D. The Merger-Related Debt Load Will Cause Penn to Become Overleveraged and Limit its Business Opportunities

40. Moreover, the Merger will restrict the Company's ability to pursue future growth by increasing Penn's leverage. In this regard, Penn is already a highly leveraged company. Despite Penn's market capitalization of $2.62 billion, it has over $4.87 billion in debt, $1.33 billion in unprotected borrowings and credit facilities, and $3.46 billion in triple-net lease obligations to Gaming and Leisure Properties, Inc. ("GLPI"). Further compounding the strain on the Company is that, of the Company's current debt, $1.55 billion is due within the next 24-months, and the only way it can pay off this debt is by rolling it over at a time when interest rates are rapidly increasing. Moreover, Penn is anticipated to take on approximately $4.2 billion in debt plus financing obligations.

41. Additionally, to partially finance the Merger, in addition to the debt financing described herein, the Defendants are causing Penn to divest itself of valuable assets for $575 million in cash, then entering into agreements to lease such assets back for $315 million.

42. As a result, Penn's significant debt and depletion of valuable assets place the Company and its public shareholders in a very vulnerable position, making it susceptible to the ravages of an economic or industry downturn, constraining its ability to grow and take advantage of strategic business opportunities, and placing the Company at a disadvantage to its competitors that are less debt ridden and less leveraged.

E. Penn Shareholders Were Not Provided with Unbiased Investment Banking Advice

43. The Individual Defendants determined to (and did) ensure that investment banks with significant self-interest in the Merger were hired to opine that the consideration payable pursuant to the Merger was fair to Penn and its shareholders from a financial point of view.

44. In connection with the Merger, Penn agreed to pay Goldman Sachs $22.5 million if the Merger is consummated (in addition to fees of up to $7.1 million for providing financing for the Merger), but only $1.5 million if it is not. Consequently, in order for Goldman Sachs to receive over 90% of its $22.5 million, it had to produce a favorable fairness opinion for the Penn board to tout to their public shareholders and solicit votes in favor of the merger. Goldman Sachs is conflicted by this payment structure rendering its fairness opinion unbalanced and unsuitable for reliance by Penn's public shareholders.

45. Further, the Individual Defendants caused Penn to hire Goldman Sachs to opine on the fairness of the consideration that Penn was proposing to pay for

Pinnacle *while simultaneously hiring a Goldman Sachs affiliate to loan Penn money to finance the Merger.*

46. Upon information and belief, further driving the Individual Defendants' decision to hire Goldman Sachs was the fact that Goldman Sachs was also holding positions in Pinnacle's common stock valued at approximately $10.6 million at the time it issued its fairness opinion (a fact that the Board caused the Company to misrepresent to Plaintiff and other Penn shareholders), thus giving Goldman Sachs a further incentive to opine that the Merger was fair. Indeed, during the time that it was providing advice to Penn on the Merger Goldman Sachs' and its affiliates more than doubled their holdings in Pinnacle, increasing it by over 130%.

47. Consequently, Goldman Sachs is entitled to receive millions of dollars that it would not otherwise receive had it not opined that the Merger was "fair" and therefore it was unable to render an impartial fairness opinion.

F. <u>The Prospectus Misrepresents Goldman Sachs' Conflicts of Interests</u>

48. Additionally, in connection with the Merger Agreement, the members of Penn's Board are breaching their (and are causing Penn to breach its) fiduciary duties of disclosure to Penn's shareholders under Pennsylvania law through the issuance of a materially deficient Prospectus, mailed to Penn shareholders in connection with soliciting votes in support of the Merger. This failure to disclose material information is also an intentional interference with the contractual right of the Company's shareholders to make a fully informed decision on whether to vote in support of the

Merger. In this regard, the Prospectus is severely deficient because it fails to disclose the following material information:

(a) According to the Prospectus, in the ordinary course of business, Goldman Sachs and its affiliates may actively trade or hold the securities of Penn, Pinnacle, and their respective affiliates (or portfolio companies, as applicable) for its own account or for the account of its customers and, accordingly, may at any time hold a long or short position in such securities. The Prospectus is deficient because it fails to disclose that Goldman Sachs and its affiliates do ***in fact*** hold positions in Pinnacle's securities and that they had steadily increased their holdings in Pinnacle since they began advising the Company on the proposed transaction. Indeed, from the time Goldman Sachs began advising Penn on a potential acquisition of Pinnacle, it has increased its holdings in Pinnacle by over 130%. As of December 31, 2017, Goldman Sachs and its affiliates owned over $10.6 million worth of Pinnacle's common stock.

Information with regard to any conflicts of interest that the Company's financial advisor may have is material to the public shareholders in determining how much weight to place on its fairness opinion and must therefore be disclosed. This information is particularly material here because the Defendants have misleadingly stated that Goldman Sachs' *may* have holdings in Pinnacle when Goldman Sachs *in fact* holds over $10.6 million worth of Pinnacle's common stock.

(b) According to the Prospectus, Penn's management discussed with the Board their intention to have Goldman Sachs finance the acquisition of Pinnacle in addition to acting as Penn's financial advisor throughout the transaction. The Prospectus is deficient for failing to disclose the details, circumstances, and reasoning leading up to Penn's selection of Goldman Sachs, who was already providing financial services to Penn in connection with the Merger, to also provide debt financing to Penn notwithstanding the significant conflict of interest this foisted upon Goldman Sachs.

Information with regard to any conflicts of interest that the Company's financial advisors may have is material to the public shareholders in determining how much weight to place on their fairness opinions and must therefore be disclosed. Here, by

requesting financing from Goldman Sachs, the Defendants have effectively foisted a conflict on Goldman Sachs. In this regard, the higher the price Penn pays for Pinnacle, the greater its need to draw from the financing Goldman Sachs is providing.

(c) According to the Prospectus, $2.5 million of Goldman Sachs' transaction fee is payable at the discretion of Penn. The Prospectus is deficient for failing to disclose the factors that Penn will consider when determining to pay the discretionary fee and the circumstances under which this discretionary fee is payable.

Information with regard to any conflicts of interest that the Company's financial advisors may have is material to the public shareholders in determining how much weight to place on their fairness opinions and must therefore be disclosed.

FIRST CAUSE OF ACTION

CLASS CLAIM FOR BREACH OF CONTRACT AND INTENTIONAL INTERFERENCE WITH CONTRACTUAL VOTING RIGHTS

(Against the Individual Defendants)

49. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

50. In acquiring Penn shares, Plaintiff and the other members of the Class acquired a contractual right to have Penn and its directors make full and complete disclosure of material information when they seek shareholder action. This right is found, *inter alia*, in Penn's Articles of Incorporation and Bylaws, particularly when those documents are interpreted in light of the covenant of good faith and fair dealing implicit in every contract governed by Pennsylvania law.

51. By reason of the foregoing allegations, the Individual Defendants have intentionally interfered with that contractual right in the absence of a privilege or justification for such interference.

52. As a result, Plaintiff and the Class have been and will be irreparably harmed.

WHEREFORE, Plaintiff demands judgment as follows: (i) determining that this action is properly maintainable as a class action, and that Plaintiff is a proper class representative; (ii) determining that this action is a proper derivative action under Pa. R.C.P. Rule 1506, and that Plaintiff is a proper derivative representative; (iii) declaring that the Defendants intentionally interfered with shareholders' rights, including the contractual rights of shareholders to make informed voting decisions, in the absence of a privilege or justification for such interference; (iv) declaring that Defendants have breached their duties and obligations to Penn; (v) declaring that the Defendants' conduct has resulted in or will result in damages to Penn, Plaintiff and the Class; (vi) enjoining consummation of the Merger Agreement until trial; (vii) awarding Plaintiff and the Class compensatory and/or rescissory damages (in an amount in excess of arbitration limits) as allowed by law; (viii) awarding interest, attorney's fees, expert fees and other costs, in an amount to be determined; and (ix) granting such other relief as the Court may find just and proper.

SECOND CAUSE OF ACTION

CLASS CLAIM TO ENJOIN THE SALE OF THE COMPANY FOR FUNDAMENTAL UNFAIRNESS UNDER 15 Pa.C.S. § 1105

(Against All Defendants)

52. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

53. Pursuant to 15 Pa.C.S. § 1105, shareholders in a Pennsylvania corporation are entitled to an injunction against a merger if fundamental unfairness is present.

54. In causing Penn to enter into the Merger Agreement, the Individual Defendants allowed their personal interests in receiving substantial cash payments and other personal incentives to prevail over their duties of care, loyalty, and good faith to the Company. As a result, the Individual Defendants caused the Company to agree to overpay for Pinnacle, which resulted in the fundamentally unfair terms of the Merger Agreement.

55. Further, by causing the Company to issue a materially misleading and deficient Prospectus, the Individual Defendants have breached Penn's shareholders rights (and intentionally interfered with Penn's shareholders rights) to make a fully informed vote on the Merger, which is fundamentally unfair.

56. As alleged above, the Merger Agreement is fundamentally unfair to Penn's legitimate shareholders with respect to the way the Merger Agreement was negotiated and disclosed to Penn's shareholders and the economic and financial considerations and consequences of consummation of the Merger Agreement. This

Court therefore has the authority under Pennsylvania state and common law to enjoin the sale of the Company to Penn.

WHEREFORE, Plaintiff demands judgment as follows: (i) determining that this action is properly maintainable as a class action, and that Plaintiff is a proper class representative; (ii) determining that this action is a proper derivative action under Pa. R.C.P. Rule 1506, and that Plaintiff is a proper derivative representative; (iii) declaring that the Defendants intentionally interfered with shareholders' rights, including the contractual rights of shareholders to make informed voting decisions, in the absence of a privilege or justification for such interference; (iv) declaring that Defendants have breached their duties and obligations to Penn; (v) declaring that the Defendants' conduct has resulted in or will result in damages to Penn, Plaintiff and the Class; (vi) enjoining consummation of the Merger Agreement until trial; (vii) awarding Plaintiff and the Class compensatory and/or rescissory damages (in an amount in excess of arbitration limits) as allowed by law; (viii) awarding interest, attorney's fees, expert fees and other costs, in an amount to be determined; and (ix) granting such other relief as the Court may find just and proper.

THIRD CAUSE OF ACTION

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTIES

(Against the Individual Defendants)

57. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

58. By reason of the foregoing, the Individual Defendants have breached their fiduciary duties of, *inter alia*, good faith, loyalty, fair dealing, and due care to Penn and have acted to put their personal interests ahead of the interests of the Company, rather than making good faith decisions after an adequate investigation. Further, because the Individual Defendants were motivated by their own personal self-interests, 15 Pa.C.S. § 1715(b) is inapplicable.

59. As a result, Penn has and will be harmed.

WHEREFORE, Plaintiff demands judgment as follows: (i) determining that this action is properly maintainable as a class action, and that Plaintiff is a proper class representative; (ii) determining that this action is a proper derivative action under Pa. R.C.P. Rule 1506, and that Plaintiff is a proper derivative representative; (iii) declaring that the Defendants intentionally interfered with shareholders' rights, including the contractual rights of shareholders to make informed voting decisions, in the absence of a privilege or justification for such interference; (iv) declaring that Defendants have breached their duties and obligations to Penn; (v) declaring that the Defendants' conduct has resulted in or will result in damages to Penn, Plaintiff and the Class; (vi) enjoining consummation of the Merger Agreement until trial; (vii) awarding Plaintiff and the Class compensatory and/or rescissory damages (in an amount in excess of arbitration limits) as allowed by law; (viii) awarding interest, attorney's fees, expert fees and other costs, in an amount to be determined; and (ix) granting such other relief as the Court may find just and proper.

FOURTH CAUSE OF ACTION

DERIVATIVE CLAIM FOR FAILURE TO DISCLOSE

(Against the Individual Defendants)

60. Under applicable law, the Individual Defendants have a fiduciary obligation to cause the Company to disclose all material facts in the Prospectus so that shareholders can make an informed decision as to whether to vote their shares in support of the Merger. As alleged in detail above, the Individual Defendants have breached their fiduciary duty through causing the Company to make materially inadequate disclosures and material omissions – a breach of fiduciary duty caused by the motivations alleged above.

61. As a result of these failures to disclose, Penn has and will be irreparably harmed.

WHEREFORE, Plaintiff demands judgment as follows: (i) determining that this action is properly maintainable as a class action, and that Plaintiff is a proper class representative; (ii) determining that this action is a proper derivative action under Pa. R.C.P. Rule 1506, and that Plaintiff is a proper derivative representative; (iii) declaring that the Defendants intentionally interfered with shareholders' rights, including the contractual rights of shareholders to make informed voting decisions, in the absence of a privilege or justification for such interference; (iv) declaring that Defendants have breached their duties and obligations to Penn; (v) declaring that the Defendants' conduct has resulted in or will result in damages to Penn, Plaintiff and the Class; (vi) enjoining consummation of the Merger Agreement until trial; (vii) awarding Plaintiff and the Class compensatory and/or rescissory damages (in an

amount in excess of arbitration limits) as allowed by law; (viii) awarding interest, attorney's fees, expert fees and other costs, in an amount to be determined; and (ix) granting such other relief as the Court may find just and proper.

FIFTH CAUSE OF ACTION

CLASS CLAIM FOR UNJUST ENRICHMENT

(Against the Individual Defendants)

62. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

63. As demonstrated by the allegations above, the Merger Is the product of self-dealing and misrepresentations by the Individual Defendants amounting to fraud or fundamental unfairness.

64. The Individual Defendants are unjustly enriching themselves at the expense of Plaintiff and the members of the Class and should be required to disgorge their unjust gain.

WHEREFORE, Plaintiff demands judgment as follows: (i) determining that this action is properly maintainable as a class action, and that Plaintiff is a proper class representative; (ii) determining that this action is a proper derivative action under Pa. R.C.P. Rule 1506, and that Plaintiff is a proper derivative representative; (iii) declaring that the Defendants intentionally interfered with shareholders' rights, including the contractual rights of shareholders to make informed voting decisions, in the absence of a privilege or justification for such interference; (iv) declaring that Defendants have breached their duties and obligations to Penn; (v) declaring that

the Defendants' conduct has resulted in or will result in damages to Penn, Plaintiff and the Class; (vi) enjoining consummation of the Merger Agreement until trial; (vii) awarding Plaintiff and the Class compensatory and/or rescissory damages (in an amount in excess of arbitration limits) as allowed by law; (viii) awarding interest, attorney's fees, expert fees and other costs, in an amount to be determined; and (ix) granting such other relief as the Court may find just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all counts of this Complaint that are so triable.

BRUBAKER CONNAUGHTON GOSS & LUCARELLI LLC

Date: 3/9/18 By: _____

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