

STATE OF INDIANA) IN LAKE CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF LAKE) CAUSE NO. _____

RODERICK RATCLIFF,)
)
Plaintiff,)
)
v.) ***Preliminary Injunctive Relief***
) ***Requested***
INDIANA GAMING COMMISSION;)
MICHAEL MCMAINS, MARC D. FINE,)
SUSAN WILLIAMS, JASON DUDICH,)
and CHUCK COHEN, in their official)
capacities as Commissioners of the Indiana)
Gaming Commission; and SARA GONSO)
TAIT, in her official capacity as the)
Executive Director of the Indiana Gaming)
Commission,)
)
Defendants.

COMPLAINT AND VERIFIED PETITION FOR JUDICIAL REVIEW

For his complaint against Defendants Indiana Gaming Commission (“Gaming Commission”); the Gaming Commission’s commissioners, Michael McMains, Marc D. Fine, Susan Williams, Jason Dudich, and Chuck Cohen (“Commissioners”); and the Gaming Commission’s Executive Director, Sara Gonso Tait, Plaintiff Roderick Ratcliff states as follows:

Introduction

1. The much-anticipated Hard Rock Casino Gary is scheduled to open in Gary, Indiana in less than four months. This \$300 million project will provide thousands of jobs, with a priority for hiring Gary residents, and generate millions in tax revenues for the State and the City of Gary. Rod Ratcliff—a long-time advocate

of Indiana’s gaming industry—is the driving force behind the Hard Rock Casino Gary. The Gaming Commission has long supported Ratcliff’s ventures, which have reaped tens of millions of dollars in tax revenue for the state of Indiana.

2. Defendants’ hasty and ill-conceived decisions on December 23, 2020 are jeopardizing this entire project and putting thousands of jobs at stake over unsubstantiated, unfounded, and politically motivated concerns about Ratcliff’s “suitability” to hold a gaming license. Despite being a poster-child for the Defendants as a leader of the Indiana gaming community for decades, early in 2020, false rumors began circulating that Ratcliff was supposedly involved *in 2015* in improper political campaign contributions.

3. Ratcliff has not been charged with any wrongdoing in any forum, and has to his knowledge done nothing illegal or improper, at all. While Ratcliff’s former business partner was indicted for alleged misconduct in September 2020, the authorities declined to prosecute Ratcliff (despite the fact that the five-year statute of limitations on such conduct was then about to expire). Accordingly, Ratcliff believes that the authorities vested with the power to investigate criminal misconduct agree with him: Ratcliff has done nothing improper. Nonetheless, these rumors have been used by Ratcliff’s commercial rivals, and disgruntled former employees, to attack Ratcliff, his business, and his reputation. These attacks have caused turmoil for Ratcliff’s business partners in the Indiana gaming community; as a result, Ratcliff has voluntarily stepped aside from control at the Hard Rock Casino Gary to protect the project and to make sure that Gary residents can begin benefitting from it immediately.

4. In late 2020, Ratcliff entered into negotiations to sell his shares of the Hard Rock Casino Gary, and received interest from a number of suitable buyers. As Ratcliff neared a deal to sell his shares to one individual, Hard Rock—the minority owner of the Hard Rock Casino Gary—made a lowball offer for Ratcliff’s shares, offering less than 50% of the value that Hard Rock had paid for its shares long before the project got under way. Hard Rock later made a second offer, somewhat increasing its price, that was still less attractive than other offers. Given the unfavorable offer from Hard Rock, Ratcliff decided to reject it and sell his shares to someone else.

5. In the following weeks, on information and belief, Defendants had numerous conversations with Hard Rock, strategizing on how to force Ratcliff out. These backroom conversations culminated on December 23, 2020, when Defendants chose to dispense with due process, Indiana law, and the Constitution to unilaterally impose a death sentence on Ratcliff’s ability to sell his gaming business to the suitor of his choice. Rather than afford Ratcliff a hearing into the rumors circulating around him, Defendants acted *ultra vires*, disregarded Ratcliff’s voluntary withdrawal from the project, and purported to invoke their “emergency” powers to dispense with the normal due process afforded to license holders. Passing two hastily considered Orders, Defendants suspended Ratcliff’s gaming license and required him to remove himself from control over his shares of the Hard Rock Casino Gary.

6. While Ratcliff is willing to step down from Indiana gaming on his own terms, Defendants’ actions seem designed to force Ratcliff to sell his shares, under a cloud of suspicion and regulatory pressure, to Hard Rock for a fraction of their worth.

7. To be clear, Ratcliff does not take issue with Defendants’ right to regulate him and to impose a penalty if he has done something wrong. But Defendants must follow the law, like everyone else. Indiana’s gaming laws afford all license holders a right to due process, and the Gaming Commission cannot bypass that statutorily guaranteed right to favor one commercial actor over another, which appears to be exactly what Defendants did on December 23, 2020.

8. On that date, Defendants gave Ratcliff no notice, no hearing, and no process before they stripped him of his license and his ability to sell his shares on his own terms. In an apparent effort to concoct an end-around of Ratcliff’s rights, Defendants claimed to be using “emergency” powers based on a number of overstated, false, and outright odd grounds. For one, Defendants somehow conjured up an “emergency” based on the fact that Ratcliff—a rightful owner of the Hard Rock Casino Gary—had entered into negotiations regarding the sale of his shares. Of course, as an owner of the casino, Ratcliff had a right to negotiate to sell his shares. Indeed, the Gaming Commission had specifically stated only weeks earlier that Ratcliff could, and should, try to sell his shares. It appears that Defendants’ real concern was that Ratcliff had *rejected* an offer to sell his shares *to Hard Rock*. Defendants also cited allegations from 2015 (of which they had been aware for months), flimsy administrative shortcomings, and Ratcliff’s purported failure to “cooperate” as grounds for an “emergency,” without regard to the actual facts or the law.

9. Rather than let Ratcliff sell his shares to another party, Defendants favored Hard Rock by forcing Ratcliff into a less advantageous commercial position. Favoring one commercial suitor over another, as appears to be the case here, does not

give Defendants good grounds to invoke “emergency” powers. Defendants’ intent is further demonstrated by Executive Director Gonso Tait’s attempt to exert even further pressure on Ratcliff to sell to Hard Rock when she, without any vote by the Gaming Commission, suspended development of the Hard Rock Casino Gary until Ratcliff is gone. She has no authority to do that. When the curtains are pulled back, Defendants’ actions evidence an apparent motivation to push Ratcliff out in favor of Hard Rock—the minority member in the project—so that Hard Rock can fully own and operate the Hard Rock Casino Gary.

10. Ratcliff does not, in this action, ask the court to declare him “suitable” to operate a casino—he will seek that relief elsewhere, as necessary. With this lawsuit, Ratcliff simply asks the Court to require Defendants to provide him the protections that the Constitution and Indiana law require and to stop Defendants’ hasty and ill-considered actions that threaten the Hard Rock Casino Gary itself. Accordingly, Ratcliff asks the Court to enjoin Defendants from issuing the unlawful Orders that exceeded their powers.

Parties and Jurisdiction

A. Roderick Ratcliff

11. At all times relevant to this action, Ratcliff has been a United States citizen and a resident of the State of Florida. Ratcliff is a significant investor in Spectacle Entertainment Group, LLC (“Spectacle Entertainment”), and until mid-2020 served as Spectacle Entertainment’s Chairman and CEO.

12. The principal place of business of Spectacle Entertainment is in Lake County, Indiana.

13. Ratcliff is a substantial owner, through Spectacle Entertainment, of Spectacle Gary, LLC, the ultimate parent of Majestic Star Casino in Lake County, Indiana. Spectacle Gary has its principal place of business in Lake County, Indiana. Ratcliff holds a Level 1 occupational license relating to the operation of a Lake County riverboat casino, which the Gaming Commission has approved moving on land to the new Hard Rock Casino Gary site.

B. The Indiana Gaming Commission

14. The Gaming Commission is a state commission established under Indiana Code § 4-33-3-1 and existing under the laws of the State of Indiana. *See* Ind. Code § 4-33-3-1 et seq. The Gaming Commission’s mailing address is East Tower, Suite 1600, 101 W. Washington St., Indianapolis, IN 46204.

C. The Commissioners

15. Defendants Michael McMains, Marc D. Fine, Susan Williams, Jason Dudich, and Chuck Cohen are residents of Indiana who are the current Commissioners of the Gaming Commission. The Commissioners exercise policymaking and legislative powers and duties of the Gaming Commission pursuant to Indiana Code § 4-33-4-1 et seq.

D. Executive Director Sara Gonso Tait

16. Defendant Sara Gonso Tait is a resident of Indiana who is the current Executive Director of the Gaming Commission. The Executive Director is charged with carrying out the executive functions of the Gaming Commission. 68 Ind. Admin. Code 1-2-7. She has no power to act, however, when the Gaming Commission has

provided her contrary directions—such as when the Gaming Commission has explicitly approved a project she wants to halt. *See* 68 Ind. Admin Code § 1-2-8.

E. Jurisdiction and Venue

17. This Court has jurisdiction over the parties to this lawsuit and has subject matter jurisdiction over Ratcliff’s claims pursuant to Ind. Code §§ 4-21.5-5-2(c) and 34-14-1-1.

18. This Court has personal jurisdiction over all parties to this action.

19. This matter concerns, among other things, the suspension of Ratcliff’s occupational license for the Hard Rock Casino Gary in Lake County, Indiana. Venue is therefore proper and preferred in this County pursuant to Indiana Trial Rule 75 and Indiana Code § 4-21.5-5-6.

20. Ratcliff need not exhaust all administrative remedies prior to filing this Complaint and Verified Petition pursuant to Ind. Code §§ 4-21.5-5-2(c). Additionally, Indiana law provides that if the exhaustion of administrative remedies would be futile or if the challenged agency action is *ultra vires*, then exhaustion of administrative remedies is not required. *Indiana Dep’t of Env’tl. Mgmt. v. Twin Eagle LLC*, 798 N.E.2d 839, 844 (Ind. 2003) (“[E]xhaustion of administrative remedies is not required if a statute is void on its face, and it may not be appropriate if an agency’s action is challenged as being *ultra vires* and void.”); *Med. Licensing Bd. v. Provisor*, 678 N.E.2d 814, 817–18 (Ind. Ct. App. 1997) (“[A] party is not required to exhaust his or her administrative remedies if exhaustion would be futile, the applicable statute is alleged to be void on its face or irreparable injury would result if the party were forced to comply with the exhaustion procedures.”). As set forth in detail below,

Defendants' actions challenged in this Complaint and Verified Petition are *ultra vires*. Moreover, requiring Ratcliff to pursue additional administrative relief prior to seeking judicial review would be futile.

21. This Complaint is timely under Ind. Code § 4-21.5-5-5 because it is filed within 30 days after the date Ratcliff was served with notice of the agency action that is the subject of this Complaint.

Factual Background

A. Ratcliff has been a key player in developing Indiana's racing and gaming industries, which have brought in millions in revenue for the state of Indiana.

22. Roderick Ratcliff is a self-made man with a high school education. Before getting his start in the gaming industry, Ratcliff sold corn seed and fertilizer and ran a small Indiana trucking company.

23. Ratcliff's grandfather owned 25 ponies and horses when Ratcliff was a child, and thus Ratcliff became an early proponent of horse racing in Indiana. Ratcliff went on to eventually develop two Indiana race tracks. His company partnered with Churchill Downs in 1994 to establish Hoosier Park in Anderson, which was Indiana's first pari-mutuel racetrack. Ratcliff's company also acquired and operated Indiana Grand Racing and Casino in Shelbyville.

24. Ratcliff has long advocated for Indiana's gaming industry. In the 1990s, the Gaming Commission awarded Ratcliff's partnership a license for the Argosy Casino, a riverboat casino in Lawrenceburg. In addition, the Gaming Commission has granted gaming licenses to Hoosier Park and Indiana Grand Racing and Casino.

25. Ratcliff's companies ultimately operated these racetracks and casinos and three off-track betting locations that hosted more than 6.5 million guests annually. His businesses have created over 2,000 Indiana jobs and have contributed more than \$1 billion to Indiana's economy—as well as millions to the state's coffers in tax revenue.¹

26. Ratcliff is also heavily involved in his local communities. Ratcliff has previously served as a foundation board member of the Indianapolis affiliate of the American Civil Liberties Union and is a former board member of the First United Methodist Church in West Lafayette. He has donated millions of dollars to Purdue University for construction of a state-of-the-art equine hospital in Shelbyville.

27. Civic organizations have recognized Ratcliff's contributions on a host of occasions. Ratcliff received the Sagamore of the Wabash, the State's highest honor. He was a finalist for the Ernst & Young Midwest Entrepreneur of the Year and the Columbia Club in Indianapolis named him Columbian of the Year. The Indiana Standardbred Association awarded Ratcliff the Pinnacle Award and he is a member of the Indiana Horse Racing Association Hall of Fame. Without question, throughout his nearly 30 years in the gaming industry in Indiana, Ratcliff has been known as a leader, has supported the local communities and economies, and has been well-respected and well-regarded by everyone, including the Gaming Commission.

¹ In 2018, Caesars Entertainment Group purchased Ratcliff's other racing and gaming facilities in Indiana.

B. Ratcliff spearheads the Hard Rock Casino Gary project.

28. In 2018, Ratcliff was named president and CEO of Spectacle Entertainment. Ratcliff owns approximately 22% of outstanding Spectacle Entertainment shares. By November 2018, Spectacle Entertainment had purchased the Majestic Star Casino, located on the shore of Lake Michigan in Gary, and its two gaming licenses.

29. With one of the licenses, Spectacle Entertainment planned a \$125 million casino in Terre Haute. With the other, Spectacle Entertainment partnered with Hard Rock Gary, LLC, a subsidiary of Hard Rock International, to build the \$300 million Hard Rock Casino Gary.

30. The Hard Rock Casino Gary will be located on 30 acres in Gary, near Interstate 94. Following a groundbreaking in January 2020, construction is well underway on the 200,000 square-foot structure. The Hard Rock Casino Gary will offer 1,650 slot machines and 80 table games, a sportsbook and bar, six restaurants, a retail store, and a 2,000-seat entertainment venue. Future plans include a Hard Rock Hotel and an attached parking garage.

31. The Hard Rock Casino Gary will employ 1,000 temporary construction workers, 950 employees from Majestic Star, and 400 to 500 new workers—with hiring priority for Gary residents and contracts for minority-owned businesses.

32. As part of his involvement in developing the Hard Rock Casino Gary, after a thorough vetting process, the Gaming Commission granted Ratcliff a Level 1 occupational license in or around March 2019.

33. The Hard Rock Casino Gary was initially slated to open on March 15, 2021. Based on Defendants' actions on December 23, 2020, Spectacle Gary has postponed the opening until at least April 15, 2021.

C. Ratcliff voluntarily removes himself from control over any gaming after criminal allegations surface concerning Spectacle Entertainment's former general counsel.

34. In 2019 and 2020, five individuals were charged with making illegal campaign contributions in 2015 and 2016. One of the individuals indicted was John Keeler, the former general counsel of Spectacle Entertainment. None of the indictments named Ratcliff and none involved the planned casino in Terre Haute or the Hard Rock Casino Gary.

35. Although Ratcliff has not been accused of committing any crime, rumors surrounding his involvement with those charged began to circulate, likely propelled by, among others, his commercial rivals. Although Ratcliff vehemently denies any wrongdoing, he ultimately decided in 2020 that he did not want to pose any obstacle to his business partners at Spectacle Gary, or to the Gary project and the economic boost it would provide to the region. Accordingly, to ensure the timely opening of the planned casinos, Ratcliff resigned as Spectacle Entertainment's CEO and chairman in June 2020 and voluntarily relinquished control over the Spectacle Entertainment subsidiary involved with the Terre Haute casino.

36. On July 6, 2020, Ratcliff also sent a Letter of Assurance to Executive Director Gonso Tait assuring the Gaming Commission that he would take particular actions were he ever to be charged with a crime or to be the subject of other proceedings. Ratcliff's letter included the following:

If I am indicted or charged with any crime that arises out of the facts and circumstances alleged in [criminal proceedings commenced in the Eastern District of Virginia], any violation of the Indiana Riverboat Gaming Act, or any crime described in IC 4-33-8-3(2) (Crimes), or if the Commission initiates administrative action pursuant to 4-33-8-8, I will promptly amend and restate the Roderick J. Ratcliff Revocable Trust dated August 24, 2018 (Trust) by replacing myself as trustee with a person acceptable to the Commission to serve as the sole trustee during the pendency of any criminal action or administrative action against me.

(Ex. 3 at 3.)

37. To date, Ratcliff has not been charged with any crime arising out of the criminal proceedings in the Eastern District of Virginia or elsewhere. Nor has the Gaming Commission initiated any administrative action against Ratcliff by filing a complaint pursuant to Indiana Code § 4-33-8-8. Accordingly, and importantly, the conditions stated in Ratcliff's letter have not materialized.

38. On December 22, 2020, Ratcliff entered into an agreement to sell his shares of Spectacle Gary. The agreement itself was fully executed, final, and binding—although certain aspects of the agreement were contingent upon the sale being approved by the Gaming Commission and Hard Rock. Importantly, the provisions of the agreement by which Ratcliff transferred his shares of Spectacle Entertainment to an escrow account and his voting rights to a proxy were not contingent. As of December 22, 2020, Ratcliff had absolutely no control over any gaming activities in the state of Indiana.

D. The Gaming Commission takes unilateral action against Ratcliff without initiating administrative proceedings against him or conducting an evidentiary hearing as required by law.

39. On December 23, 2020, the Gaming Commission convened a public meeting and a private Executive Session of the Commissioners. During the public meeting, the Commissioners and Executive Director Gonso Tait discussed the ongoing development of the Hard Rock Casino Gary, Ratcliff's occupational license, and Ratcliff's interest in Spectacle Entertainment and affiliated entities. Tellingly, during that same meeting, representatives for Hard Rock repeatedly suggested, and essentially begged, that the Gaming Commission force Ratcliff to sell his shares to Hard Rock.

40. At the close of the meeting on December 23, 2020, the Gaming Commission and its Commissioners issued two orders relating to Ratcliff.

a. Gaming Commission Emergency Order No. 2020-MS-03 – Emergency Order Suspending Ratcliff's Gaming License without Notice or an Evidentiary Hearing

41. First, the Gaming Commission issued Emergency Order No. 2020-MS-03 ("Emergency Order") dated December 23, 2020. A copy of the Emergency Order is attached as **Exhibit 1**. All of the Commissioners voted in favor of the Emergency Order. The Emergency Order states that any license held by Ratcliff was "hereby immediately SUSPENDED." (Emergency Order at 7.) The Emergency Order was made effective for 90 days. (*Id.* at 8.)

42. The Emergency Order includes a single statement regarding the purported "emergency" that justified it: "An emergency is warranted as [Ratcliff] is

continuing to function and exert control and influence on behalf of the casino owner's licensee." (*Id.* at 7.) This is a transparently absurd reason to invoke "emergency" powers, as every single casino license holder in Indiana continues to function and exert control and influence over a casino—that is the very nature of a casino license—unless and until the Gaming Commission suspends that license. Under Defendants' twisted logic, every rumor the Gaming Commission heard about a license holder would constitute an emergency because the subject of the rumor was operating a casino. That is not the law. If the Gaming Commission believes a license holder has done something wrong, they **must** follow due process under Ind. Code § 4-21.5-3 and 68 Indiana Administrative Code 13-1 and hold a hearing to investigate those suspicions and determine whether a license should be suspended. The Gaming Commission cannot bypass a license holder's due process rights by declaring an "emergency" merely because a license holder is using his license (especially in a situation like here, where the license holder has already signed a written and binding agreement relinquishing his control over gaming activities).

43. In Indiana, pursuant to Ind. Code § 4-21.5-4-1, an Indiana agency may conduct special proceedings dispensing with notice and hearing requirements only if an "emergency" exists. *See, e.g., Lundeen v. Rhoad*, 991 F. Supp. 2d 1008, 1018 (S.D. Ind. 2014). The only emergency situation identified by the Gaming Commission's regulations is a direct threat to public safety. *See* 68 Ind. Admin. Code 13-1-22 (Gaming Commission may suspend a license without a hearing "if the commission determines that the safety or health of patrons or employees would be threatened by the continued operation of the casino"). No such situation exists here.

44. In early December 2020, Ratcliff was an owner of shares of Spectacle Gary and had every right to negotiate a potential sale of those shares, and to take into account the impact of any such sale on his business partners. Up until that point, Defendants had not taken any official action to strip Ratcliff of that right. What is more, prior to the issuance of the Emergency Order, on a conference call, Executive Director Gonso Tait encouraged Ratcliff, through counsel, to negotiate the sale of his ownership interest with Hard Rock. It was only when Ratcliff **rejected Hard Rock's offer** that Defendants suddenly proclaimed an "emergency" based on Ratcliff taking action that an owner of a casino is permitted, and indeed encouraged, to do. And as noted above, the day before Defendants suspended his license on December 23, Ratcliff had signed an agreement to further distance himself from Indiana gaming by contractually transferring control of his shares and voting rights to other individuals. The Commission was aware of this agreement but disregarded it nonetheless.

45. The Emergency Order also referenced other allegations that may give Defendants reason to **initiate an administrative hearing** against Ratcliff, but certainly do not give rise to an "emergency" that warrants dispensing with due process. For example, the Emergency Order cites the indictment filed in the Southern District of Indiana on September 24, 2020, about which Defendants had been aware for months and which does not charge Ratcliff with any crimes or even mention his name. Defendants do not claim, and there would be no basis to claim, that the September 2020 indictment of another person, based on conduct that occurred years ago, somehow means that Ratcliff's license creates an emergency.

46. Similarly untethered to provable facts, the Emergency Order claimed that Ratcliff had failed to cooperate because he had declined to sit for an interview with a Gaming Commission investigator. (*Id.* at 4–5.) As even the Emergency Order itself admits, however, while Ratcliff initially declined to sit for an interview in June 2020, he immediately changed course and stated that he would be available. (*Id.*) Then, after six months of no requests from Defendants, and ongoing cooperation by Ratcliff through regular dialogue by counsel and document productions, the Gaming Commission finally came back to Ratcliff and asked him to sit for an interview in early December 2020. Ratcliff initially agreed, but then on December 9, through counsel, sent an email stating:

As you may know, Rod Ratcliff is in the process of divesting his ownership interest in Spectacle and stepping back from the gaming business in Indiana to move on to other professional pursuits. In light of these developments, Rod will no longer be regulated by the Commission and as such there would be no purpose for the meeting Thursday. That said, Rod will continue to cooperate with the Commission’s investigation, and in the event Rod’s divestment from Spectacle is, for some reason, not approved, Rod would sit for an interview at a future date.

(**Exhibit 2**, email dated 12/9/2020.) While Defendants may take issue with Ratcliff’s scheduling priorities, Ratcliff’s decision to put off an interview was certainly not an “emergency.”

47. Even further afield, the Emergency Order stated that three unnamed “associates” of Ratcliff had declined interviews with the Gaming Commission in the course of their investigation. (Ex. 1 at 5.) Whether Ratcliff is guilty by association because his former colleagues declined to talk to the Gaming Commission (a

seemingly un-American view of things, to be sure) is a question that could, and should, have been answered through a formal hearing, but is a far cry from an emergency. Finally, the Emergency Order lists various “failures” by Ratcliff to “update” or “disclose” run-of-the-mill transactions or contracts entered into by Ratcliff or Spectacle Entertainment dating back months and years. (*Id.* at 5–6.) Again, perhaps these administrative issues could have been grounds for a hearing into Ratcliff’s suitability, but they certainly do not create an emergency.²

48. Under the administrative procedures in Ind. Code § 4-21.5-3 and 68 Ind. Admin. Code 13-1, in the absence of an emergency, Defendants were required to formally accuse Ratcliff by way of complaint, at which point Ratcliff would be afforded the opportunity to contest those accusations through an evidentiary hearing where he could cross examine and call witnesses—all before any penalty was issued. Instead, in an apparently unprecedented departure from Indiana agency practice, the Gaming Commission dispensed with the statutorily guaranteed process under the guise of an “emergency.” From Ratcliff’s point of view, the only rationale explaining Defendants’ hastily issued and *ultra vires* Emergency Order was that Defendants intended to squeeze Ratcliff to sell to Hard Rock at a discount.

² The Emergency Order states that Ratcliff may request an evidentiary hearing to challenge the Order, which hearing will be set by the Gaming Commission “as quickly as is practicable.” (*Id.* at 8.) Although Ratcliff is challenging the legality of the Order in this action, to preserve his rights (as required by the timing statute, Ind. Code § 4-33-4-17(b)), Ratcliff formally submitted a request for a factual hearing on January 4, 2021 in response to the Emergency Order in the event the illegal Orders are not voided by this Court.

b. Gaming Commission Order No. 2020-168 – Non-Emergency Order Relating to Ratcliff’s Trust

49. On December 23, 2020, Defendants also issued Order No. 2020-168, titled “An Order of the Indiana Gaming Commission Regarding an Equity Interest in a Casino Owner’s License” (“Non-Emergency Order”). The Emergency Order and the Non-Emergency Order are collectively referred to as “the Orders.” A copy of the Non-Emergency Order is attached as **Exhibit 3**. All of the Commissioners voted in favor of the Non-Emergency Order.

50. The Non-Emergency Order requires, among other things, that Ratcliff by January 8, 2021 relinquish “any ability to exercise control, management, or voting related to Spectacle Gary and Spectacle Entertainment, including but not limited to amending and restating the Roderick J. Ratcliff Trust Agreement by replacing the current trustee with a person acceptable to the Gaming Commission to serve as trustee during the pendency of the administrative action against Mr. Ratcliff.” (Ex. 3 at 2.) Effectively, the Non-Emergency Order requires Ratcliff to appoint a trustee aligned with Defendants to oversee *his own personal trust*, thus placing control over his *personal* assets (including *but not limited to* his casino shares) under Defendants’ control. If the Non-Emergency Order was enforced, Defendants’ hand-selected trustee would take over and control all decisions about Ratcliff’s personal estate, distribution of his assets upon death, personal tax decisions, and familial and marital affairs. Defendants have no such power.

51. The Non-Emergency Order does not cite any statutory or regulatory authority to support it. The Non-Emergency Order instead cites Ratcliff’s July 6, 2020

Letter of Assurance that states “if the Commission initiates an administrative action pursuant to Ind. Code § 4-33-8-8, [Ratcliff] will, promptly amend and restate the Rodrick J. Ratcliff Revocable Trust dated August 24, 2018 (Trust) by replacing myself as trustee with a person acceptable to the Commission to serve as the sole trustee during the pendency of any criminal action or administrative action against me.” (*Id.* at 3.) However, the Gaming Commission has not initiated any administrative action against Ratcliff by filing a complaint pursuant to Ind. Code § 4-33-8-8. Rather, Defendants (improperly) invoked “emergency” powers pursuant to Ind. Code § 4-21.5-4-1. Accordingly, the Gaming Commission’s action has not triggered the proposals of the Letter of Assurance and therefore the Gaming Commission had no authority to issue the Non-Emergency Order. Even if that provision had been triggered, Ratcliff’s Letter of Assurance is not a binding contract, is unsupported by consideration, and is not subject to enforcement via dictate.

52. In addition to being fundamentally disconnected from the assurances Ratcliff gave, the Non-Emergency Order contains requirements that go beyond Ratcliff’s proposals in the Letter of Assurance. Most obviously, it requires that Ratcliff relinquish control of his shares to someone *independent* from his own affairs (or those of Spectacle Entertainment) and then indemnify that person. Given the personal nature of the trust, those are conditions that Ratcliff would not, and did not, propose to undertake.

53. While reserving his right to challenge the Non-Emergency Order, on January 4, 2021, Ratcliff explained to Defendants that he had already removed himself from control over the Hard Rock Casino Gary on December 22, 2020, and thus

the intent of the Non-Emergency Order to ensure Ratcliff was not operating the Hard Rock Casino Gary was already satisfied. On January 19, 2021, Executive Director Gonso Tait notified Ratcliff of his “non-compliance” with the Non-Emergency Order, and that the Gaming Commission would pursue relief if Ratcliff did not comply by January 25, 2021.

c. The Executive Director, without a vote of the Gaming Commission, suspends the Hard Rock Casino Gary.

54. During the Gaming Commission’s meeting on December 23, 2020, Executive Director Gonso Tait stated that she intended to suspend development of the Hard Rock Casino Gary until the Gaming Commission resolved its concerns about Ratcliff. Pursuant to this statement, the Executive Director has ordered a halt to the transfer of equipment from the Majestic Star casino to the Hard Rock Casino Gary. She did this even though the Gaming Commission has never issued an official order pausing construction or development of the Hard Rock Casino Gary.

55. Executive Director Gonso Tait doubled down on this statement in a letter to Spectacle Gary on December 29, 2020. She stated that she was indefinitely suspending development of the Hard Rock Casino Gary. As she wrote:

Pursuant to Ind. Code § 4-33-6-4.5, the Commission’s approval to move gaming operations inland is conditioned upon Plan Approval. In accordance with the delegation of authority granted by Order 2019-255, Commission action on the required Plan Approval for relocation of gaming operations from the docked riverboat to the inland facility is hereby suspended until further notice. In addition, Commission staff will not divert resources from the operational docked riverboat to the incomplete inland project, including requests to ship or store regulated equipment at the inland site.

(**Exhibit 4**, 12/29/2020 letter from Sarah Gonso Tait to Spectacle Gary LLC.)

56. Executive Director Gonso Tait has no authority to suspend development of the Hard Rock Casino Gary, which the Gaming Commission had previously approved by a unanimous vote of the Commissioners. The Gaming Commission's Order 2019-255 nowhere grants the Executive Director authority to suspend development of the Hard Rock Casino Gary under these circumstances.

E. The Orders have caused Ratcliff immediate and irreparable harm for which no adequate remedy exists at law.

57. Together, the Orders have caused reputational harm for Ratcliff among his business partners and associates involved in the Hard Rock Casino Gary. The Orders have jeopardized the financing of the Hard Rock Casino Gary project by jeopardizing the underlying financing documents and agreements involving Spectacle Entertainment and Spectacle Gary, in which Ratcliff is a significant investor. These repercussions may well further delay, compromise, or lead to the cancellation of development of the Hard Rock Casino Gary.

58. Moreover, the Orders effectively block Ratcliff's ability to negotiate a sale of his shares, on his terms, which causes immediate and irreparable harm. Indeed, when read together, the Orders dictate that Ratcliff: (1) cannot negotiate the terms of the sale of his shares; and (2) must place his shares under the control of a trustee approved by Defendants and not one of Ratcliff's trusted confidants. As soon as Ratcliff's shares are transferred to a trustee of Defendants' choosing, the shares will most likely be sold to Hard Rock at a fire-sale price.

59. Defendants' *ultra vires* actions artificially deflate the value of Ratcliff's investment, impermissibly infringe upon his ability to negotiate a sale of his interests, and effectively steal control over Ratcliff's shares out from under him, under the guise of "regulation" but without any due process. The degree to which these *ultra vires* actions have harmed Ratcliff is unquantifiable.

60. For these reasons, the Orders have caused Ratcliff to suffer immediate and irreparable harm for which no adequate remedy exists at law.

Claims for Relief and Petition for Review

COUNT I

Declaration that the Emergency Order was *Ultra Vires* and is Void

61. Ratcliff incorporates the allegations above into this paragraph.

62. The Emergency Order invokes the authority provided in the emergency provisions of Chapter 4 of the Administrative Orders and Procedures Act ("AOPA"). Chapter 4 of AOPA states that an agency may conduct proceedings when "an emergency exists." Ind. Code § 4-21.5-4-1. When the agency finds that an emergency exists, the agency is authorized to proceed "without notice or an evidentiary hearing." Ind. Code § 4-21.5-4-2.

63. The Emergency Order also invokes 68 Indiana Administrative Code 13-1-22, entitled "Special Proceedings." According to that section, if the Gaming Commission "determines that an emergency exists," the Gaming Commission may suspend an occupational license "without notice or an evidentiary proceeding." 68 Ind. Admin. Code 13-1-22(b). A "special proceeding under this section must comply with Ind. Code § 4-21.5-4 [Chapter 4 of AOPA]." 68 Ind. Admin. Code 13-1-22.

64. According to the Emergency Order, an “emergency is warranted as [Ratcliff] is continuing to function and exert control on behalf of the casino owner’s license.” (Ex. 1 at 7.) The Emergency Order further states that “an emergency exists as the Commission cannot regulate in accordance with statute [sic] while allowing Respondent to flagrantly repudiate responsibilities required with licensure.” (*Id.*)

65. But an “emergency” as defined by Chapter 4 of AOPA or the “Special Proceedings” provisions of § 13-1-22 has never existed with respect to Ratcliff’s license as Ratcliff’s actions can hardly be considered an “emergency,” such as an immediate threat to the health and safety of patrons or employees.

66. Notably, the assertion that Ratcliff is “continuing to function and exert control on behalf of the casino owner’s license” is not true. On December 22, 2020, Ratcliff informed Defendants that he had reached an agreement for another individual to take over Ratcliff’s rights to control, manage, and vote on issues relating to the operation of Spectacle Entertainment. Any concerns about Ratcliff’s continued management of Spectacle Entertainment or Hard Rock Casino Gary—which Ratcliff disputes are legitimate grounds for suspension of his license regardless—were thus mooted in advance of the Emergency Order. Even so, Defendants stated at the December 23, 2020 hearing that they were disregarding the December 22, 2020 agreement. Defendants made a pre-ordained decision without regard to the law.

67. Defendants have ample time to consider the suspension of Ratcliff’s license through existing normal procedures with an evidentiary hearing, and proceeding on an emergency basis is improper. The Hard Rock Casino Gary is not

slated to open for several months. Defendants had more than sufficient time to provide Ratcliff with an evidentiary hearing in advance of this scheduled opening.

68. Because no “emergency” exists, Defendants were not authorized to act pursuant to the provisions of Chapter 4 of AOPA and the “Special Proceedings” provisions of § 13-1-22.

69. The suspension of Ratcliff’s license is therefore *ultra vires* and void.

COUNT II

Declaration that the Non-Emergency Order was *Ultra Vires* and is Void

70. Ratcliff incorporates the allegations above into this paragraph.

71. The Non-Emergency Order demanded that Ratcliff, among other things, relinquish “any ability to exercise control, management, or voting related to Spectacle Gary and Spectacle Entertainment, including but not limited to amending and restating the Roderick J. Ratcliff Trust Agreement by replacing the current trustee with a person acceptable to the Commission to serve as trustee during the pendency of the administrative action against Mr. Ratcliff.” (Ex. 3 at 2.) Again, the Non-Emergency Order effectively requires Ratcliff to hand over control of his *personal*, marital, and familial decision-making (including but not limited to his casino shares) to someone independent of Ratcliff and hand-chosen by the Defendants.

72. The Non-Emergency Order does not identify any authority granted to Defendants under the Indiana Code, the Indiana Administrative Code, the Riverboat Gambling Act, or any other statutes or regulations that would enable Defendants to order Ratcliff (or any individual) to relinquish control of his rights to exercise control,

management, or voting related to his ownership interest in any company. No such authority exists.

73. Defendants did not provide Ratcliff with an evidentiary hearing in advance of issuance of the Non-Emergency Order.

74. The Non-Emergency Order relies on proposals within the Letter of Assurance regarding the initiation of an administrative action pursuant to Ind. Code § 4-33-8-8. However, the Gaming Commission has not followed Ind. Code § 4-33-8-8, which would have required that Ratcliff be granted a hearing, and instead has relied on purported “emergency” powers pursuant to Ind. Code § 4-21.5-4-1.

75. The Non-Emergency Order was an *ultra vires* action, and is therefore void, because Defendants do not have authority to order the relinquishment of rights to exercise control, management, or voting related to an ownership interest in Ratcliff’s personal assets.

COUNT III

Declaration that the Non-Emergency Order Violates the “Due Course of Law” Provisions of Art. 1, § 12 of the Indiana Constitution (As-Applied Challenge to Non-Emergency Order No. 2020-168)

76. Ratcliff incorporates the allegations above into this paragraph.

77. Ratcliff, through his interest in the Roderick J. Ratcliff Trust Agreement, is an owner of a substantial interest in Spectacle Entertainment. Spectacle Entertainment owns a substantial interest in Spectacle Gary, LLC.

78. Ratcliff’s ownership interest in Spectacle Entertainment entitles him to vote, manage, and exert control over Spectacle Entertainment, and/or to decide who he may transfer those rights to as his proxy. Ratcliff therefore has a protected

property interest in his right to vote, manage, and exert control over Spectacle Entertainment (including through a proxy).

79. Relying on no authority in law or contract, the Non-Emergency Order states that Ratcliff must remove himself “from any ability to exercise control, management, or voting related to Spectacle Gary and Spectacle Entertainment” and requires Ratcliff to appoint a trustee—over his own personal trust—that is acceptable to the Defendants.

80. The Gaming Commission provided Ratcliff with neither advance notice of the Non-Emergency Order nor an evidentiary hearing.

81. The Non-Emergency Order did not recite any appeal rights or provide Ratcliff with an opportunity to request an evidentiary hearing.

82. The Non-Emergency Order violates the “due course of law” provisions of the Indiana Constitution.

83. As a result, Ratcliff has been immediately and irreparably harmed, when his shares are put under the control of a trustee favored by the Gaming Commission and no adequate remedy exists at law to compensate Ratcliff for his loss.

COUNT IV
Violation of the Due Process Clause of the Fourteenth Amendment to the
United States Constitution and 42 U.S.C. § 1983
(As-Applied Challenge to Non-Emergency Order 2020-168)

84. Ratcliff incorporates the allegations above into this paragraph.

85. Ratcliff, through his interest in the Roderick J. Ratcliff Trust Agreement, is an owner of a substantial interest in Spectacle Entertainment. Spectacle Entertainment owns a substantial interest in Spectacle Gary, LLC.

86. Ratcliff has a protected property interest in his ownership of Spectacle Entertainment and Spectacle Gary, LLC.

87. The Non-Emergency Order states that Ratcliff must remove himself “from any ability to exercise control, management, or voting related to Spectacle Gary and Spectacle Entertainment” and place control over his *personal* assets (including but not limited to his casino shares) under the control of a trustee that is favorable to Defendants.

88. Ratcliff was not given advance notice of the Non-Emergency Order, nor was he provided with an evidentiary hearing.

89. The Non-Emergency Order did not recite any appeal rights or provide Ratcliff with an opportunity to request an evidentiary hearing.

90. The Non-Emergency Order violates the Due Process Clause of the Fourteenth Amendment by altering the nature of Ratcliff’s ownership interests in Spectacle Entertainment and Spectacle Gary, LLC without due process.

91. As a result, Ratcliff has been immediately and irreparably harmed, and no adequate remedy exists at law to compensate Ratcliff for his loss.

COUNT V
Petition for Review

92. Ratcliff incorporates the allegations above into this paragraph.

93. For the reasons stated above, Ratcliff asks this Court to review the Orders attached as **Exhibits 1 and 3** pursuant to Indiana Code § 4-21.5-5-8 because those orders: (i) are wholly arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (ii) are contrary to constitutional right, privilege, power,

privilege, or immunity; (iii) are in excess of statutory jurisdiction, authority, limitations, or short of statutory right; (iv) were entered without observance of procedure required by law; and (v) are unsupported by substantial evidence.

94. Ratcliff has complied with the notice provisions of Indiana Code § 4-21.5-5-8 by serving a copy of this petition on the Gaming Commission, the Commissioners, Executive Director Gonso Tait, and the attorney general.

WHEREFORE, Roderick Ratcliff requests that the Court enter judgment in Ratcliff's favor and against Defendants and award Ratcliff the following relief:

- a) A ruling vacating the Emergency Order and the Non-Emergency Order;
- b) Declaratory relief as set forth above, including but not limited to:
 - i) A declaration that the Non-Emergency Order violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
 - ii) A declaration that the Non-Emergency Order violates the "due course of law" provisions of the Indiana Constitution;
 - iii) A declaration that the Emergency Order and/or the Non-Emergency Order are *ultra vires* and void;
- c) Preliminary and permanent injunctive relief as follows:
 - i) enjoining Defendants from suspending Ratcliff's Level 1 occupational license;
 - ii) enjoining Defendants from requiring Ratcliff to relinquish control, management, or voting rights with respect to any

company in which he has invested, including but not limited to Spectacle Entertainment Group, LLC;

- iii) staying enforcement of the Non-Emergency Order and Emergency Order, including a stay of enforcement of the Non-Emergency Order during the pendency of the Court's review of this Complaint and Petition for Review under Indiana Code § 4-21.5-5-9;
- d) Legal damages for Count IV in an amount to be determined at trial;
- e) Costs, disbursements, and reasonable attorneys' fees and expert fees incurred by Plaintiff in connection with this action under 42 U.S.C. § 1988 and as otherwise allowed by law;
- f) Pre- and post-judgment interest on all sums recoverable; and
- g) Other equitable relief consistent with the above.

[SIGNATURE PAGES FOLLOW]

I affirm, under the penalties for perjury, that the factual allegations contained in this *Complaint and Verified Petition for Judicial Review* are true to the best of my knowledge.

Dated: 1/19/2021

A handwritten signature in black ink, appearing to read "Roderick Ratcliff", written in a cursive style.

Roderick Ratcliff

Dated: January 19, 2021

Respectfully submitted,

/s/ Paul E. Harold

Paul E. Harold (25917-71)

Jesse M. Barrett (23811-71)

Patrick J. O'Rear (36270-71)

SouthBank Legal: LaDue | Curran | Kuehn

100 E. Wayne Street, Suite 300

South Bend, IN 46601

Tel: 574.968.0760

Fax: 574.968.0761

jbarrett@southbank.legal

pharold@southbank.legal

porear@southbank.legal

Dan Webb (pro hac pending)

Steve Grimes (pro hac pending)

Matt Durkin (pro hac pending)

Ade Johnson (pro hac pending)

Winston & Strawn LLP

35 W. Wacker Drive

Chicago, IL 60601

Tel: 312.558.5600

dwebb@winston.com

sgrimes@winston.com

mdurkin@winston.com

aojohnson@winston.com

Attorneys for Plaintiff

Roderick Ratcliff