

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOCKET NO. 418 MD 2018

POM OF PENNSYLVANIA, LLC,

Petitioner,

v.

**COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
REVENUE, and CITY OF PHILADELPHIA,**

Respondents,

and

PENNSYLVANIA GAMING CONTROL BOARD,

Intervenor.

**THE PENNSYLVANIA GAMING CONTROL BOARD'S
APPLICATION TO INTERVENE PURSUANT TO PA.R.CIV.P. 2327-2330**

Pennsylvania Gaming Control Board
303 Walnut Street/Strawberry Square
Commonwealth Tower/5th Floor
Harrisburg, PA 17101
(717) 346-8300

R. Douglas Sherman
Chief Counsel
PA Attorney I.D. No. 50092

Stephen S. Cook
Deputy Chief Counsel
PA Attorney I.D. No. 77807

Dated: February 20, 2020

*Attorneys for Pennsylvania Gaming
Control Board*

The Pennsylvania Gaming Control Board (the Board), through its counsel and pursuant to Pa.R.Civ.P. 2327 - 2330, hereby requests this Court to grant it intervention as a Respondent in this action. As set forth below, the Board is the only entity in the Commonwealth granted general and sole regulatory authority over every aspect of the authorization, operation and play of slot machines in the Commonwealth, including of skill slot machines. A decision of this Court will affect that general and sole regulatory authority as well as the Board's duties to protect the public through the regulation of gaming in the Commonwealth. In support hereof, the Board provides the following:

I. INTRODUCTION

The Pennsylvania Gaming Control Board hereby petitions to intervene in POM of Pennsylvania LLC v. Commonwealth of Pennsylvania, Department of Revenue, and the City of Philadelphia, pending before the Pennsylvania Commonwealth Court at Docket No. 418 MD 2018. In the underlying action, POM asserts that it operates skill-based amusement devices throughout the Commonwealth including in the City of Philadelphia. POM asserts that the machines which can result in the payout of prizes to players have been seized as illegal gambling devices in the City of Philadelphia. Moreover, POM asserts that when the City of Philadelphia seizes such machines, it deprives the Commonwealth, through the Department of Revenue of the opportunity to collect revenue on the income and

prizes generated by the alleged skill games. See Pet. For Review at ¶¶1-5. POM seeks declaratory relief that POM's "Skill Game" is a legal game of skill under Pennsylvania law, and an injunction prohibiting seizures, arrests and prosecutions against those machines. Id at ¶6.

The Pennsylvania Race Horse Development and Gaming Act (the Gaming Act), 4 Pa.C.S. §§1101, et seq., (Part II), first enacted in July 2004 and subsequently amended in 2006, 2010 and 2017, established an intricate and all-encompassing regulatory model for a variety of gaming products in Pennsylvania, specifically providing that the intent of the General Assembly in doing so as "the primary objective of this part to which all other objectives and purposes are secondary is to protect the public **through the regulation and policing of all activities involving gaming** and practices that continue to be illegal". 4 PA.C.S. §1102(1). (emphasis added). The General Assembly created the Pennsylvania Gaming Control Board to oversee all gaming as provided for in the Gaming Act and vested it with broad-ranging powers and duties, including the **general and sole regulatory authority over the conduct of gaming** and related activities as described in the Gaming Act, ... and sole regulatory authority over every aspect of the authorization, operation and play of slot machines. 4 PA.C.S. §1102(1). (emphasis added).

Despite the Board being granted general and sole regulatory authority over the conduct of gaming, operators of so-called skill machines, like those operated by

POM, have continued to operate their machines outside the regulatory structure established by the Gaming Act. The significance of the skill game debate became crystalized when the Commonwealth Court held, in its November 20, 2019 Opinion in this action, that the skill games at issue fall within the definition of a “slot machine” under the Gaming Act. While ultimately that Court determined that the skill slot machines not located in Board licensed facilities are outside the jurisdiction of the Board under the Gaming Act, the Court did not address whether the General Assembly’s enactment of the Gaming Act was intended to foreclose any similar gaming product not located in a Board-licensed facility. Given that the legislation gave the **general and sole authority to regulate all gaming** in Pennsylvania including the **sole regulatory authority over every aspect of the authorization, operation and play of slot machines**, the legislation clearly demonstrates an intent to regulate the entire field of slot machines in Pennsylvania and to eliminate opportunities for two classes of slot machines: those with player protections and fairness, and those without.

Because the Gaming Control Board is the only authority tasked with general and sole regulatory authority over every aspect of the operation and play of slot machines in Pennsylvania and because the primary object of the legislation is to protect the public through the regulation of all activities involving gaming, which includes slot machine gaming, the Board is in a unique position as the only

Commonwealth agency with the duty to oversee gaming and to represent an interest of significant importance not currently represented by any other party in this litigation.

II. STATEMENT OF FACTS

1. The Pennsylvania Race Horse Development and Gaming Act (the Gaming Act), 4 Pa.C.S. §§1101, et seq., was enacted July 5, 2004 with a primary objective, to which all other objectives and purposes are secondary, to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful. 4 Pa.C.S. §1102(1).

2. Other expressed intents of the Gaming Act include:

a. It is the intent of the General Assembly to authorize the operation and play of slot machines, table games and interactive gaming under a single slot machine license issued to a slot machine licensee. 4 Pa.C.S. §1102(12).

b. It is also the intent of the General Assembly to ensure the sustainability and competitiveness of the commercial gaming industry in this Commonwealth by authorizing interactive gaming, the operation of multistate wide-area progressive slot machines, skill and hybrid slot machines. 4 Pa.C.S. §1102(12.2).

3. The Gaming Act established the Pennsylvania Gaming Control Board as an independent board which shall be a body corporate and politic. 4 Pa.C.S. §1201(a).

4. Membership of the Gaming Control Board is comprised of seven members with three appointed by the Governor, and four appointed by the President pro tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives and the Minority Leader of the House of Representatives, respectively. 4 Pa.C.S. §1201(b).

5. Section 1202 of the Gaming Act establishes the general and specific powers of the Board.

6. Section 1202(a)(1) provides in part: The Board shall have sole and general regulatory authority over the conduct of gaming and related activities as described in this part. The Board shall ensure the integrity of the acquisition and operation of slot machines, and shall have the sole regulatory authority over every aspect of the authorization, operation and play of slot machines,

7. By amendment through Act 42 of 2017, the General Assembly specifically added terms and definitions of “hybrid slot machine” and “skill slot machine” to Section 1103 of the Gaming Act on or about October 30, 2017.

8. The General Assembly amended the definition of “slot machine” to include “A skill slot machine, hybrid slot machine and the devices or associated

equipment necessary to conduct the operation of a skill slot machine or hybrid slot machine” as part of the 2017 amendment of the Gaming Act.

9. The Board’s duty to protect the public includes the Board’s gaming laboratory’s testing and certification of slot machines which meet statutory and regulatory criteria.

10. The Gaming Act requires that “all slot machine terminals be linked, at an appropriate time to be determined by the department, to a central control computer” to provide auditing program capacity and individual terminal information. §1323(a).

11. Section 1207 of the Gaming Act provides, in part: the Board shall have the power and its duties shall be to require that each licensed gaming entity prohibit persons under 21 years of age from operating or using slot machines, ... §1207(8).

12. Section 1207 of the Gaming Act provides, in part: the Board shall have the power and its duties shall be to require that no slot machine may be set to pay out less than the theoretical payout percentage which shall be no less than 85%, as specifically approved by the Board. §1207(10).

13. The Gaming Act provides for the operation of slot machines in Category 1, 2, 3 and 4 slot machine licensed facilities.

14. The Gaming Act provides for a comprehensive regulatory and oversight scheme for the slot machines in order to protect the public and also fulfill the secondary purposes of the General Assembly.

15. The Gaming Act does not provide for slot machines to be operated or otherwise subject to regulation in any location in the Commonwealth other than a Board licensed facility.

16. Slot machines operated outside of a Board licensed facility are not subject to the same public protections as commanded for slot machines in Board licensed facilities.

17. There is no Pennsylvania statute that expressly authorizes the operation of slot machines in Pennsylvania which are not under the Board's regulatory authority pursuant to the Gaming Act.

18. No Commonwealth agency other than the PGCB is vested with "general and sole regulatory authority" to regulate gaming in Pennsylvania under the Gaming Act or with the "the sole regulatory authority over every aspect of the authorization, operation and play of slot machines."

19. The Respondents named in this action are the Commonwealth, Department of Revenue and the City of Philadelphia.

20. The Pennsylvania Gaming Control Board was not named as a Respondent in this action.

21. The Department of Revenue's responsibilities and authority pursuant to Section 1501 of the Gaming Act are in relation to administering and collecting taxes imposed.

22. The City of Philadelphia has no expressed duties under the Gaming Act with respect to regulating or overseeing slot machine gaming in the Commonwealth.

23. The Gaming Control Board, as the only agency authorized to have sole regulatory authority over every aspect of the authorization, operation and play of slot machines in the Commonwealth and, thereby, to protect the public, is uniquely qualified and positioned to address the scope of regulation of slot machine gaming in the Commonwealth in a manner not suited to the scope of duties conferred on the other parties to this matter.

24. The authority of the Gaming Control Board as the general and sole authority over the conduct of gaming which includes slot machine gaming and as the sole regulatory authority over every aspect of the authorization, operation and play of slot machines as provided by in the Gaming Act will be affected by an adverse judgment in this matter as the primary purpose of protecting the public through the regulation of gaming will not be fulfilled.

25. As the general and sole authority over the conduct of gaming which includes slot machine gaming and as the sole regulatory authority over every aspect of the authorization, operation and play of slot machines as provided by in the

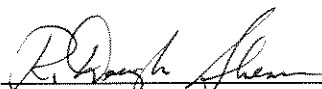
Gaming Act, the Gaming Control Board could have been named as a Respondent in this matter by POM of Pennsylvania, LLC.

26. If granted status as an intervenor in this action, the Gaming Control Board has submitted herewith an Answer to POM of Pennsylvania, LLC's Petition for Review for Declaratory and Injunctive Relief, which is appended hereto as Exhibit 1.

WHEREFORE, the Pennsylvania Gaming Control Board respectfully requests permission to intervene as a Respondent in this matter and to participate as a party in that capacity.

Respectfully submitted,

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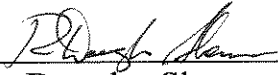
*Attorneys for Pennsylvania Gaming
Control Board*

Dated: February 20, 2020

CERTIFICATE OF COMPLIANCE

I certify this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 20, 2020



R. Douglas Sherman
Chief Counsel

CERTIFICATE OF SERVICE

I, R. Douglas Sherman, hereby certify that on this 20th day of February 2020, caused a true and correct copy of the foregoing Application to be served by depositing same in the United States Mail, first class mail, postage prepaid, in Harrisburg, Pennsylvania, upon the following:

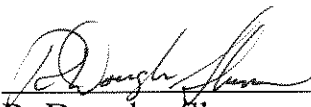
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Chief Counsel

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DOCKET NO. 418 MD 2018

ORDER

AND NOW, this _____ day of _____, 2020, the Pennsylvania Gaming Control Board's Application to Intervene is hereby GRANTED. The Pennsylvania Gaming Control Board shall be permitted to intervene with full party status in the above-captioned proceeding.

By the Court:

J.

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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NOTICE TO PLEAD

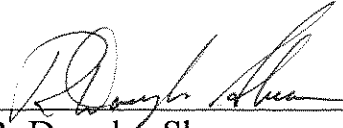
To: POM OF PENNSYLVANIA, LLC

You are hereby notified to file a written response to the enclosed Answer within thirty (30) days from service hereof or a judgment may be entered against you.

Pennsylvania Gaming Control Board
303 Walnut Street/Strawberry Square
Commonwealth Tower/5th Floor
Harrisburg, PA 17101
(717) 346-8300

Dated: February 20, 2020

Respectfully Submitted:



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PENNSYLVANIA GAMING CONTROL BOARD,

Intervenor.

**THE PENNSYLVANIA GAMING CONTROL BOARD'S ANSWER TO
THE PETITION FOR REVIEW OF POM OF PENNSYLVANIA, LLC**

The Pennsylvania Gaming Control Board (the Board), through its counsel, hereby responds to the Petition for Review of POM of Pennsylvania, LLC, in accordance with the numbering thereof as follows:

1. ADMITTED IN PART. DENIED IN PART. It is ADMITTED upon information that POM distributes software for a video game machine called the Pennsylvania Skill Amusement Device 402.49 throughout the Commonwealth of

Pennsylvania, including in the City of Philadelphia. The Board is without information or knowledge sufficient to determine the truth of the averment that the machine is “skill-based” and therefore that averment is DENIED.

2. DENIED AS STATED. While one Beaver County Court of Common Pleas decision exists relative to one machine and the software installed thereon, it is DENIED that that decision is precedential in this matter, or that it is preclusive to all machines which POM claims to be “skill-based”.

3. DENIED. It is DENIED that skill based slot machines such as those offered by POM are legal in Pennsylvania in any location outside of a Board-licensed slot machine facility. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the seizure of machines by the Philadelphia Police Vice Unit and therefore that allegation is DENIED.

4. DENIED. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the actions by the Philadelphia Police and therefore those allegations are DENIED.

5. The averment that the machines have been illegally seized is a conclusion of law to which no response is required. To the extent deemed factual, the averment is DENIED. It is DENIED that the seizure of machines deprives the Commonwealth of tax revenues. It is contrary to law to operate slot machines, including skill based slot machines, anywhere but a licensed facility in the

Commonwealth. Said permissible and authorized slot machines pay a tax rate of approximately 52% of gross terminal revenue and therefore the operation by POM of unauthorized slot machines actually illegally diverts tax monies from lawful slot machines and other gaming products like the lottery from the intended Commonwealth beneficiary.

6. It is DENIED that an Application for Preliminary Injunction was filed contemporaneous to the Petition for Review. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the POM's purpose in filing the action and therefore those allegations are DENIED. It is however DENIED that the operation of the "skill-based" slot machines are legal.

7. Paragraph 7 is a conclusion of law to which no response is required.

8. Paragraph 8 is a conclusion of law to which no response is required.

9. It is ADMITTED upon information that POM is a limited liability corporation that sells the "Skill Game" throughout the Commonwealth and in Philadelphia. It is DENIED that the "Skill Game" is permitted, authorized, or otherwise legal for sale in Pennsylvania.

10. ADMITTED IN PART. DENIED in PART. It is ADMITTED that Philadelphia is the largest city in Pennsylvania. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the Philadelphia Police's Vice Unit and therefore those allegations are DENIED.

11. DENIED AS STATED. Although the department does collect revenue on income generated in Pennsylvania, the POM games are unauthorized and illegal slot machines which do not pay taxes at the rate of authorized, legal slot machines.

12. ADMITTED IN PART. DENIED IN PART. It is ADMITTED upon information that POM distributes the Pennsylvania Skill game throughout the Commonwealth of Pennsylvania, including in taverns, restaurants and social clubs that serve alcohol under license from the LCB. It is DENIED that such machines are operated legally.

13. It is ADMITTED upon information that the skill game machine is a coin operated video machine. It is DENIED that it is an authorized or legal machine for play in Pennsylvania.

14. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the "skill game" or the Tic-Tac-Toe game and therefore those allegations are DENIED.

15. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the "skill game" or the Tic-Tac-Toe game and therefore those allegations are DENIED.

16. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the "Follow-Me second phase of play on the skill game" or the Tic-Tac-Toe game and therefore those allegations are DENIED.

17. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the Tic-Tac-Toe game and therefore those allegations are DENIED.

18. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the display of the game described and therefore those allegations are DENIED.

19. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the pattern displayed in the game described and therefore those allegations are DENIED.

20. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the time the player has to change a symbol or the reason therefore of the game described and therefore those allegations are DENIED.

21. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the most advantageous spot to place the Wild symbol of the game described or the reasons for doing so and therefore those allegations are DENIED.

22. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the failure to place the Wild symbol of the

game described or the consequences of not doing so and therefore those allegations are DENIED.

23. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the bonus session of the game described and therefore those allegations are DENIED.

24. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the bonus sessions of the game described or the reasons for the bonus sessions and therefore those allegations are DENIED.

25. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the paragraph concerning the play of the Tic-Tac-Toe game as described and therefore those allegations are DENIED.

26. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the "Follow-Me second phase of play on the skill game" or the Tic-Tac-Toe game and therefore those allegations are DENIED.

27. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the "Follow-Me second phase of play on the skill game" or the Tic-Tac-Toe game and therefore those allegations are DENIED.

28. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the potential award to a player for playing the game and therefore those allegations are DENIED.

29. Paragraph 29 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED since the skill game is at best, a skill based slot machine which is not authorized or legal to possess or operate in Pennsylvania outside of a Board-licensed facility.

30. DENIED. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the actions by the Philadelphia Police and therefore those allegations are DENIED.

31. DENIED. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the actions by the Philadelphia Police and therefore those allegations are DENIED.

32. DENIED. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the results of arrests and therefore those allegations are DENIED.

33. DENIED. The Board is without information or knowledge sufficient to determine the truth of the averments concerning the results of arrests, an alleged acquittal or the return of a seized game and therefore those allegations are DENIED.

34. Paragraph 34 states a conclusion of law to which no response is required. To the extent deemed factual, the Board is without information or knowledge sufficient to determine the truth of the averments and therefore those allegations are DENIED.

35. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 35 and therefore those allegations are DENIED.

36. Paragraph 36 states a conclusion of law to which no response is required. It is ADMITTED that the Department of Revenue's mission is to fairly, efficiently and accurately administer the tax laws and other revenue programs of the Commonwealth. It is DENIED that Philadelphia interferes with that mission by seizing POM machines since those machines are not authorized or legal for possession or operation in Pennsylvania. To the extent deemed factual, the Board is without information or knowledge sufficient to determine the truth of the remaining averments and therefore those allegations are DENIED.

37. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 37 and therefore those allegations are DENIED.

38. DENIED. The "skill game" distributed by POM is a skill based slot machine as defined in the Pennsylvania Race Horse Development and Gaming Act which is only authorized and legal to be possessed and operated in a Board-licensed facility by a Board licensed person. The POM skill game is illegal.

39. ADMITTED that paragraph 39 quotes a portion of the statute 18 PA.C.S. §5513. DENIED that it quotes the entire section.

40. Paragraph 40 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED.

41. Paragraph 41 states a conclusion of law to which no response is required. By way of further answer, it is DENIED that the paragraph sets forth the proper inquiry in this matter. The proper inquiry is whether the Pennsylvania Race Horse Development and Gaming Act preempts the field of slot machine gaming which is authorized in Pennsylvania, thus rendering the POM machines unauthorized and illegal.

42. Paragraph 42 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED.

43. Paragraph 43 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED.

44. ADMITTED.

45. Paragraph 45 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED. By way of further answer, it is irrelevant whether the game is chance or skill as it is a slot machine and slot machines are only authorized and legal to be possessed and operated by Board-licensees.

46. Paragraph 46 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED. By way of further answer, it

is irrelevant whether the game is chance or skill as it is a slot machine and slot machines are only authorized and legal to be possessed and operated by Board-licenseses.

47. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 47 and therefore those allegations are DENIED. By way of further answer, it is irrelevant whether the game is chance or skill as it is a slot machine and slot machines are only authorized and legal to be possessed and operated by Board-licenseses.

48. DENIED AS STATED. While the Court of Common Pleas of Beaver County determined that the POM game in that case was a game in which skill was the predominate factor, that game is different than those at issue in this action as reflected in footnote 1. Moreover, that Court's decision, which is not binding or precedential in this proceeding, did not consider the effect of the machine being a skill slot machine in its analysis and whether the fact of it being a slot machine rendered it unauthorized and illegal on that basis.

49. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 49 and therefore those allegations are DENIED. By way of further answer, the averments in paragraph 49 are irrelevant to this action.

50. Paragraph 50 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED. The “skill game” distributed by POM is a skill based slot machine as defined in the Pennsylvania Race Horse Development and Gaming Act which is only authorized and legal to be possessed and operated in a Board-licensed facility by a Board licensed person. The POM skill game is illegal.

51. Paragraph 51 states a conclusion of law to which no response is required. To the extent deemed factual, it is DENIED. The “skill game” distributed by POM is a skill based slot machine as defined in the Pennsylvania Race Horse Development and Gaming Act which is only authorized and legal to be possessed and operated in a Board-licensed facility by a Board licensed person. The POM skill game is illegal.

52. The Board incorporates its responses to paragraphs 1 through 51, inclusive by reference as if set forth fully herein.

53. Paragraph 53 states a conclusion of law to which no response is required.

54. Paragraph 54 states a conclusion of law to which no response is required.

55. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 55 concerning the actions of Philadelphia and, therefore, those allegations are DENIED.

56. Paragraph 56 states conclusions of law to which no response is required. To the extent deemed factual, it is DENIED. The Board is without information or knowledge sufficient to form a belief as to the truth of the allegations concerning the role of POM in designing and selling the components of the skill game and; therefore, these allegations are DENIED.

57. Paragraph 57 states conclusions of law to which no response is required. To the extent deemed factual, the Board is without information or knowledge to form a belief as to the truth of the averments concerning POM's goodwill and reputation in the Commonwealth or nationwide.

58. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 58 and, therefore, those allegations are DENIED.

59. The Board is without information or knowledge sufficient to determine the truth of the averments in paragraph 59 and, therefore, those allegations are DENIED. By way of further answer, the amount of taxes paid by POM is of no relevance to the issue of whether it is legal for POM to distribute or operate skill slot machines in the Commonwealth. Nevertheless, the amount of taxes averred to be

paid by POM to the Commonwealth is a pittance compared to what slot machine licensees pay to the Commonwealth in taxes assessed on Gross Terminal Revenue for slot machines.

60. Paragraph 60 states conclusions of law to which no response is required. To the extent deemed factual, it is DENIED.

61. Paragraph 61 states conclusions of law to which no response is required. To the extent deemed factual, it is DENIED.

62. Paragraph 62 states conclusions of law to which no response is required.

63. Paragraph 63 states conclusions of law to which no response is required. To the extent deemed factual, it is DENIED that danger to POM exists from seizures of its machines. Rather the danger is its continuing distribution and operation of slot machines contrary to law.

64. Paragraph 64 states conclusions of law to which no response is required. To the extent deemed factual, it is DENIED.

65. Paragraph 65 states conclusions of law to which no response is required. To the extent deemed factual, it is DENIED.

66. Paragraph 66 states conclusions of law to which no response is required.

67. Paragraph 67 states conclusions of law to which no response is required.

NEW MATTER

68. POM of Pennsylvania, LLC does not hold a license issued by the Pennsylvania Gaming Control Board.

69. No officer or Director of POM of Pennsylvania, LLC holds a license issued by the Pennsylvania Gaming Control Board.

70. POM of Pennsylvania, LLC does not pay a 34% daily tax from its gross terminal revenue from its skill machines in operation in the Commonwealth.

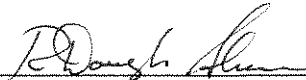
71. POM of Pennsylvania, LLC does not pay a local share assessment from its gross terminal revenue from its skill machines in operation in the Commonwealth.

72. POM of Pennsylvania, LLC does not restrict the age of persons who play its skill machines in operation in the Commonwealth to persons 21 years of age and older.

73. POM of Pennsylvania, LLC does not pay a fee to the Department of Drug and Alcohol Programs for public education, awareness and training regarding compulsive and problem gaming and the treatment and prevention of compulsive and problem gambling.

74. POM of Pennsylvania , LLC does not maintain or participate in a self-exclusion list or program for persons to voluntarily exclude themselves from playing skill slot machines in operation in the Commonwealth.

Respectfully submitted,



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PA Attorney I.D. No. 50092

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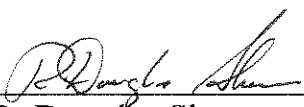
Dated: February 20, 2020

*Attorneys for Pennsylvania Gaming
Control Board*

CERTIFICATE OF COMPLIANCE

I certify this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 20, 2020

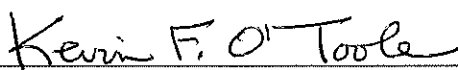


R. Douglas Sherman
Chief Counsel

VERIFICATION

The undersigned hereby certifies that the statements contained in the Pennsylvania Gaming Control Board's Answer are true and correct to the best of his knowledge, information and belief. It is understood that this statement is made subject to the penalties of 18 PA. C.S.A. §4904, relating to unsworn falsification.

Dated: February 20, 2020



Kevin F. O'Toole
Executive Director
Pennsylvania Gaming Control Board

CERTIFICATE OF SERVICE

I, R. Douglas Sherman, hereby certify that on this 20th day of February 2020, caused a true and correct copy of the foregoing Answer to be served by depositing same in the United States Mail, first class mail, postage prepaid, in Harrisburg, Pennsylvania, upon the following:

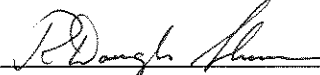
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