

STATE OF INDIANA)	IN THE MARION CIRCUIT/SUPERIOR COURT
)	SS:
COUNTY OF MARION)	CAUSE NO.
)	
END GAME HOLDINGS, LLC;)	
LAELAPS, LLC; MD TWENTY-)	
TWENTY LLC; DANIEL J. HASLER;)	
STEPHEN C. HILBERT; MATTHEW)	
D. WHETSTONE)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	
INDIANA GAMING COMMISSION)	
MICHAEL MCMAINS, in his official)	
capacity as Chairman of the Indiana)	
Gaming Commission; SARA GONSO)	
TAIT, in her official capacity as)	
Executive Director of the Indiana)	
Gaming Commission,)	
)	
<i>Defendants.</i>)	

**VERIFIED PETITION FOR JUDICIAL REVIEW, DECLARATORY JUDGMENT, AND
OTHER RELIEF**

COME NOW, End Game Holdings LLC, LAELAPS LLC, MD Twenty-Twenty LLC, Daniel J. Hasler, Stephen C. Hilbert, and Matthew D. Whetstone (singularly, a “Plaintiff,” and collectively, the “Plaintiffs”), and state as follows subject to the penalties for perjury:

1. Plaintiffs bring this cause of action pursuant to Ind. Code §§ 4-21.5-5-1, 4-22-2-45, and 34-14-1 alleging, *inter alia*, that Indiana Gaming Commission (“IGC”) Emergency Rule # 21-127(E) (“Emergency Rule”) constitutes an action beyond the scope of the IGC’s authority granted by the Indiana General Assembly (“Beyond the Scope of Authority”) and is, therefore, *void ab initio*.

PARTIES

2. Plaintiff End Game Holdings, LLC (“End Game”) is a limited liability company duly organized and existing under the laws of the State of Indiana, whose mailing address is 4680 Topsail Trace, Lafayette, Indiana 47909. End Game owns shares or units of one or more of the following: Spectacle Entertainment Group, LLC, Spectacle Gary, LLC, Spectacle Entertainment, LLC and/or Lucy Luck Gaming, LLC f/k/a Spectacle Jack, LLC (“Gaming Companies”).

3. Plaintiff LAELAPS LLC (“LAELAPS”) is a limited liability company duly organized and existing under the laws of the State of Indiana, whose mailing address is 1107 Turnberry Drive, Schererville, Indiana 46375. LAELAPS owns shares or units of one or more of the Gaming Companies.

4. Plaintiff MD Twenty-Twenty LLC (“MD”) is a limited liability company duly organized and existing under the laws of the State of Indiana, whose mailing address is 1107 Turnberry Drive, Schererville, Indiana 46375. MD owns shares or units of one or more of the Gaming Companies.

5. Daniel J. Hasler, adult (“Hasler”), is a resident of the State of Florida, whose mailing address is 13590 E. 75th Rd, Paris, Illinois 61944. Hasler owns shares or units in one or more of the Gaming Companies.

6. Stephen C. Hilbert, adult (“Hilbert”), is a resident of the State of Indiana, whose mailing address is 10201 North Illinois Street, Suite 280, Carmel, Indiana 46290. Hilbert owns shares or units of one or more of the Gaming Companies.

7. Matthew D. Whetstone, adult (“Whetstone”), is a resident of the State of Indiana, whose mailing address is 23 Oakmont Drive, Brownsburg, Indiana 46112. Whetstone owns shares or units of one or more of the Gaming Companies.

8. Defendant Indiana Gaming Commission (“IGC” or “Defendant”) is an agency of the State of Indiana as defined by Ind. Code §4-21.5-3 whose authority is established under Ind. Code §§ 4-33-3-1, *et seq.* with its principal offices located in the Hyatt Regency Indianapolis Hotel, 115 West Washington Street, Indianapolis, Indiana 46204.

9. Michael McMains (“McMains”) is Chairman of the IGC, whose mailing address is Hyatt Regency Indianapolis Hotel, 115 West Washington Street, Indianapolis, Indiana 46204. McMains is a named Defendant in his official capacity as Chairman of the IGC.

10. Sara Gonso Tait (“Tait”) is Executive Director of the IGC, whose mailing address is Hyatt Regency Indianapolis Hotel, 115 West Washington Street, Indianapolis, Indiana 46204. Tait is a named Defendant in her official capacity as Executive Director of the IGC.

JURISDICTION AND VENUE

11. The court has personal jurisdiction over the Parties.

12. The court has subject matter jurisdiction over the Parties pursuant to Ind. Code §§ 4-21.5-5-2(c), 4-33-11 and 34-14-1-1.

13. Venue is proper in accordance with Ind. Code § 4-21.5-5-6(a)(3) and Ind. Trial Rule 75.

14. The Plaintiffs hereto are entitled to review of the agency’s action in accordance with Ind. Code §§ 4-21.5-5-2(c), 4-22-2-45, and 4-33-11-1.

15. The Plaintiffs have standing in accordance with Ind. Code § 4-21.5-5-3(c).

16. Plaintiffs timely file their Petition as required by Ind. Code §§ 4-21.5-5-5, 4-22-2-45, 34-14-1-1.

17. Plaintiffs have requested that IGC prepare and provide to counsel a certified copy of the agency record within thirty (30) days after the filing of this petition in accordance with Ind. Code §4-21.5-5-13(a).

18. Plaintiffs are not required to exhaust all administrative remedies as they seek review of a nonfinal agency action which will cause them immediate and irreparable harm, and no adequate remedy exists at law. Ind. Code §4-21.5-5-2(c).

COUNT I--JUDICIAL REVIEW

19. Plaintiffs reallege and reincorporate paragraphs 1 through 18 as if set forth fully herein, and further allege as follows:

20. Plaintiffs seek judicial review of the Emergency Rule in accordance with Ind. Code § 4-21.5-5-2.

21. Plaintiffs seek judicial review of the Emergency Rule, even though it is not a Final Agency Order, because the Emergency Rule is a nonfinal agency action which will cause immediate and irreparable harm to Plaintiffs and no adequate remedy exists at law. Ind. Code § 4-21.5-5-2(c)

22. The IGC published its Emergency Rule effective March 24, 2021. A true and accurate copy is attached hereto as Exhibit A for easy reference. Upon information and belief, the IGC is attempting to apply this requirement to investors regardless of their investment level.

23. An Emergency Rule requires an agency finding that an emergency exists. Based on the record currently available, no basis for an emergency rule has been identified by the IGC. A true and accurate copy of the IGC's Resolution 2021-59 is attached hereto as Exhibit B for easy reference.

24. The IGC purports to have authority to promulgate this rule in accordance with Ind. Code §§ 4-33-4-2 (Rulemaking applicable to River Boats) and 4-35-4 (Rulemaking applicable to Race Tracks).

25. In particular, the IGC purports to have the statutory authority to promulgate the Emergency Rule through Ind. Code § 4-33-4-2, which reads:

Sec. 2. The commission shall adopt rules under IC 4-22-2 for the following purposes:

- (1) Administering this article.
- (2) Establishing the conditions under which riverboat gambling in Indiana may be conducted.
- (3) Providing for the prevention of practices detrimental to the public interest and providing for the best interests of riverboat gambling.
- (4) Establishing rules concerning inspection of riverboats and the review of the permits or licenses necessary to operate a riverboat.
- (5) Imposing penalties for noncriminal violations of this article.

Ind. Code § 4-33-4-2.

26. Section 3(a) of the Emergency Rule attempts to extend its jurisdiction to “Any holder of an equity interest in a casino owner’s licensee or applicant that is not publicly traded, or any holder of an equity interest in its substantial owner...if the equity interest is held by an entity, the individual persons of that entity are subject to licensure as determined by the commission.” In other words, the IGC attempts to extend its jurisdiction to shareholders of gaming companies. What is more the IGC attempts to extend its jurisdiction to the shareholders of shareholders of gaming companies. The IGC attempts to extend this jurisdiction without regard to the level of shareholder involvement in the company or amount invested. Thus, a person, merely by virtue of investing in a company regulated by the IGC without more, is subject to the IGC’s jurisdiction, according to this Emergency Rule. The IGC’s attempt to extend its jurisdiction to holders of an equity interest is Beyond the Scope of Authority granted by the Indiana General Assembly.

27. Section 3(a) further attempts to subject the aforementioned investors to licensure by requiring an Occupational License, Level 1. An Occupational License is required for individuals who have completed training on how to operate gambling games on a riverboat. Ind. Code §§ 4-33-2-14, 4-33-8. An Occupational Licensee would be, for example, a pit boss, not an investor whose only participation is through his or her equitable interest.

28. A Level One Occupational Licensee is also required to complete a 37-page Personal Disclosure Form that includes, but is not limited to, extensive personal information about the licensee and his or her family members, all manner of financial disclosure, and tax returns and records. All told, the disclosure requires at least 49 detailed exhibits. A true and accurate copy of the IGC Personal Disclosure Form is attached hereto as Exhibit C. The extension of Level One Occupational Licensing to investors lacks any statutory basis.

29. Section 3(b) of the Emergency Rule seems to base the determination of those required to obtain an Occupational License on what the IGC's executive director thinks would serve "the public interest." If this is the basis for licensure, the Emergency Rule fails. Emergency Rule 3(b). The IGC's powers and duties are enumerated in Ind. Code § 4-33-4-1, *et seq.* The executive director's belief regarding the public interest is not among the powers and duties created therein.

30. Section 6 of the Emergency Rule attempts to dictate the terms of shareholder transactions in gaming companies, to-wit: forcing the sale of an investor's shares at the lesser of the market price or the purchase price, among other things. This term is Beyond the Scope of Authority. *Id.*

31. Section 15 of the Emergency Rule regarding deviation from prior agency actions contains no identification of such deviations and the accompanying rationale as required

32. Sections 4 (all licensee information is not confidential), 5 (detailed financials regarding a licensee), 7 (required reporting of certain large transactions by investors, even if not related to gaming, related to “applicants”), 8 (independent director requirements for “applicants”), 9 (dictating process for approval investor transactions in excess of \$50,000 and contracts), 10 (mandated corporate policies and procedures for “applicants”) 13 (mandatory reporting by investors of cash on hand above certain thresholds, even if not related to gaming); 14 (prohibition of investor interest or employment in lobbying firm) are all likewise Beyond the Scope of Authority. *Id.*

33. Notwithstanding the Emergency Rule’s reference to Occupational Licensees and Applicants, reference is made herein to “investors” because the Emergency Rule, through convoluted drafting, applies to many investors who have no other relationship with the casino but for their ownership interest. Such terms are Beyond the Scope of Authority.

34. The IGC takes more than a broad view of its rulemaking authority under Ind. Code § 4-33-4-2, it takes an unlimited view of its authority. It attempts to bring under jurisdiction matters that related to, *inter alia*, corporate governance and securities.

35. The General Assembly has already established statutes regarding the regulation of corporate forms through its corporate code. See Title 23 (Business and Other Associations).

36. In particular, the General Assembly has already spoken with respect to the authority of professional licensing or regulatory authorities, and the IGC is not authorized to interfere. Ind. Code § 23-18-2-3.

37. Likewise, the General Assembly has already granted the authority to regulate securities through the Indiana Uniform Securities Act. Ind. Code § 23-19. The IGC is, again, nowhere authorized therein to regulate securities.

38. Upon information and belief, the IGC has set a deadline of May 7, 2021 for the Gaming Companies to impose the terms of the Emergency Rule under threat of action against the Gaming Companies' licenses.

39. The Emergency Rule is an order disguised as a rule in order to deprive Plaintiffs of their statutory and constitutional rights as established herein.

40. In a prior case, the IGC unsuccessfully attempted a similar maneuver without success. Select pleadings from that case are attached hereto as Exhibit D.

41. For the foregoing reasons, Plaintiffs allege the IGC's action through the Emergency Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; and/or unsupported by substantial evidence.

42. The Plaintiffs request a stay pending review in accordance with Ind. Code § 4-21.5-5 because there is a reasonable probability that the determination is invalid or illegal.

WHEREFORE, the Plaintiffs respectfully pray the court stay the Emergency Rule pending court decision and set a bond in an amount not to exceed Five Hundred Dollars (\$500), Ind. Code § 4-21.5-5-9(2); set aside the Emergency Rule; remand the case for further proceedings not inconsistent with Indiana law and orders of this court; for reasonable attorneys' fees and costs related hereto, and for all other relief just and proper in the premises.

**COUNT II--DECLARATORY JUDGMENT REGARDING EXISTENCE OF AN
EMERGENCY**

43. Plaintiffs reallege and reincorporate paragraphs 1-43 as if set forth fully herein, and further allege as follows:

44. In the alternative, Plaintiffs seek declaratory relief pursuant to Ind. Code § 34-4-1-1, *et seq.* with respect to the IGC's unjustified declaration of an emergency.

45. The Emergency Rule makes no attempt to identify the nature or extent of the emergency. In fact, the rule itself is silent with respect to the nature of the emergency. See Exhibit C.

46. The Plaintiffs request temporary and preliminary injunctive relief in accordance with Ind. Trial Rule 65, which will be addressed more fully by separate motion.

47. Upon information and belief, the IGC's true purpose behind the Emergency Rule is to harass, annoy, and cause substantial economic loss to certain investors whom the IGC does not favor. Although cloaked in the legitimacy of Occupational Licensee and Applicant requirements, the IGC's Emergency Rule is nothing more than attempt to handicap certain companies and persons not in the IGC's favor and is done under the color of law.

48. The Emergency Rule lasts Ninety (90) days and may be renewed once. The IGC has already indicated its intention to extend the Emergency Rule for an additional Ninety (90) days. See Exhibit B.

49. Plaintiffs will suffer immediate and irreparable injury, loss, or damage as a result of the IGC's Emergency Rule.

**COUNT IV—DECLARATORY JUDGMENT REGARDING DENIAL OF PLAINTIFFS’
RIGHT TO RELIEF BY DUE COURSE OF LAW**

53. Plaintiffs reallege and reincorporate paragraphs 1-56 as if set forth fully herein, and further allege as follows:

54. In the alternative, Plaintiffs seek declaratory relief pursuant to Ind. Code § 34-4-1, *et seq* with respect IGC’s taking of private property without the due course of law.

55. The IGC denied the Plaintiffs a remedy, technically excluding Plaintiffs as a party but subject to the loss of property, without due course of law. Article 1, Section 12 of the Indiana Constitution.

WHEREFORE, the Plaintiffs respectfully pray the court issue temporary and preliminary injunctive relief without bond or bond in the lowest amount possible, in order to preserve the *status quo*; issue permanent injunctive relief; declare the Emergency Rule void for violation of Indiana’s constitutional right to a remedy by due course of law; for reasonable attorneys’ fees and costs related hereto; and for all other relief just and proper in the premises.

**COUNT V—DECLARATORY JUDGMENT REGARDING UNLAWFUL TAKING
OF PROPERTY**

56. Plaintiffs reallege and reincorporate paragraphs 1-59 as if set forth fully herein, and further allege as follows:

57. In the alternative, Plaintiffs seek declaratory relief pursuant to Ind. Code § 34-4-1-1, *et seq* with respect to the unlawful taking of property in contravention of Article 1, Section 21 of the Indiana Constitution.

58. By virtue of dictating the purchase price of the sale of a business interest of a private party, the Emergency Rule violates Indiana's constitutional provision prohibiting of taking property without just compensation.

59. The authority of the IGC with respect to the Plaintiffs herein constitutes and unlaw delegation of authority by the legislative branch to an agency of the executive branch in contravention of Article 4, Section 1 of the Indiana Constitution.

WHEREFORE, the Plaintiffs respectfully pray the court issue temporary and preliminary injunctive relief without bond or bond in the lowest amount possible, in order to preserve the *status quo*; issue permanent injunctive relief; declare the Emergency Rule void as an unconstitutional taking of property; for reasonable attorneys' fees and costs related hereto; and for all other relief just and proper in the premises.

**COUNT VI—DECLARATORY JUDGMENT REGARDING IMPROPER
COMPOSITION OF IGC**

60. Plaintiffs reallege and reincorporate paragraphs 1-63 as if set forth fully herein, and further allege as follows:

61. In the alternative, the Emergency Rule is void because it was enacted with an improperly constituted board of commissioners.

62. The requirements for commission membership are set forth at Ind. Code §4-33-3-2. The commission is to consist of seven (7) members and must include, *inter alia*, one member who is a resident of a county that is contiguous to Lake Michigan. Ind. Code §§ 4-33-3-2(f).

63. Upon information and belief, a vacancy existed for an appointee from a county contiguous to Lake Michigan since at least Fall 2020.

64. Upon information and belief, the commission was only comprised of six (6) members at all times relevant to promulgation of the Emergency Rule (i.e., no member representing a county contiguous to Lake Michigan). *Id.*


65. The Emergency Rule is therefore void or voidable as the IGC was improperly comprised at all times relevant to enactment of the Emergency Rule.

WHEREFORE, the Plaintiffs respectfully pray the court issue temporary and preliminary injunctive relief without bond or bond in the lowest amount possible, in order to preserve the *status quo*; issue permanent injunctive relief; declare the Emergency Rule void as void because the commission was improperly constituted at all times relevant; for reasonable attorneys' fees and costs related hereto; and for all other relief just and proper in the premises.

66. Additional theories may arise during the course of this action. Accordingly, Plaintiffs expressly reserve any right to amend this complaint as further information becomes available during the pendency of this action.

[VERIFIED SIGNATURE PAGES FOLLOW]

**I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES FOR PERJURY, THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST
OF MY KNOWLEDGE.**

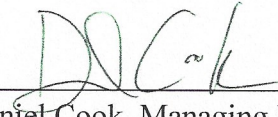

Kurt Wilson, Member
for End Game Holdings, LLC

**I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES FOR PERJURY, THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST
OF MY KNOWLEDGE.**

A handwritten signature in blue ink, reading "Dana Dumezich", is written over a horizontal line.

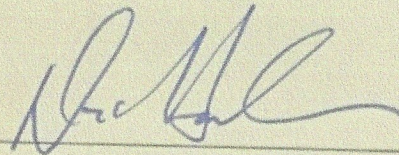
Dana Dumezich, Manager for
MD Twenty-Twenty, LLC

**I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES FOR PERJURY, THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST
OF MY KNOWLEDGE.**

A handwritten signature in blue ink, appearing to read 'DCC', is written over a horizontal line.

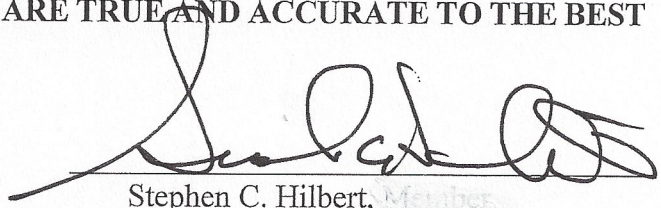
Daniel Cook, Managing Member
for LAELAPS, LLC

I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES FOR PERJURY, THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST
OF MY KNOWLEDGE.

A handwritten signature in blue ink, appearing to read 'Daniel J. Hasler', written over a horizontal line.

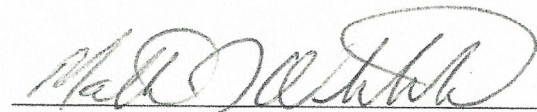
Daniel J. Hasler

I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES FOR PERJURY, THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST
OF MY KNOWLEDGE.

A handwritten signature in black ink, appearing to read 'Stephen C. Hilbert', written over a horizontal line.

Stephen C. Hilbert, Member

I SWEAR OR AFFIRM, SUBJECT TO THE PENALTIES FOR PERJURY, THAT
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE TO THE BEST
OF MY KNOWLEDGE.



Matthew D. Whetstone

Respectfully submitted,

EMBREY & EMBREY

By: 

Brent C. Embrey

Atty. No. 2416949

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Counsel for the Plaintiffs

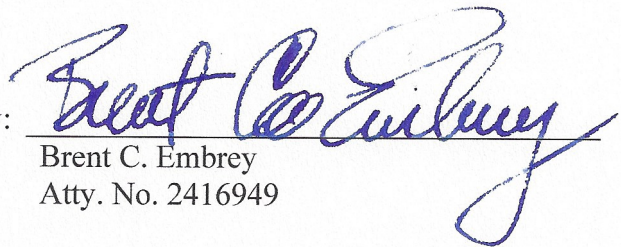
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was duly served by U.S. First Class Mail, postage pre-paid this 21st day of April, 2021, upon the following:

Indiana Attorney General
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, Indiana 46204

Defendants served by summons &
complaint.

By:


Brent C. Embrey
Atty. No. 2416949

EMBREY & EMBREY
550 Congressional Boulevard, Suite 115
Carmel, Indiana 46032