

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HG VORA CAPITAL MANAGEMENT,  
LLC, HG VORA SPECIAL  
OPPORTUNITIES MASTER FUND, LTD.,  
and DOWNRIVER SERIES LP –  
SEGREGATED PORTFOLIO C, on behalf  
of themselves and derivatively on behalf of  
PENN ENTERTAINMENT, INC.,

Plaintiffs,

-against-

PENN ENTERTAINMENT, INC., JAY  
SNOWDEN, VIMLA BLACK-GUPTA,  
ANUJ DHANDA, DAVID HANDLER,  
MARLA KAPLOWITZ, JANE  
SCACCETTI, BARBARA SHATTUCK  
KOHN, RONALD NAPLES, and SAUL  
REIBSTEIN

Defendants,

-and-

PENN ENTERTAINMENT, INC.,

Nominal Defendant.

Case No.: 5:25-cv-02313-CH

**DEFENDANTS' MOTION TO STAY**

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PENN Entertainment, Inc. ("PENN"), Jay Snowden, Vimla Black-Gupta, Anuj Dhanda, David Handler, Marla Kaplowitz, Jane, Scaccetti, Barbara Shattuck Kohn, Ronald Naples, and Saul Reibstein (collectively "Defendants,"), by and through their undersigned counsel, file this Motion to Stay seeking a stay of the litigation while the statutorily-appointed special litigation committee formed by the PENN board of directors investigates plaintiff's derivative claims. The

reasons why the Motion to Stay should be granted are set forth in the accompanying Memorandum of Law, which is attached hereto and incorporated by reference herein.

**WHEREFORE**, for the reasons set forth in accompanying memorandum of law, Defendants respectfully request that the Court grant Defendants' Motion to Stay.

Dated: May 19, 2025

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**CERTIFICATE OF SERVICE**

I, Stacey A. Scrivani, hereby certify that I caused a true and correct copy of Defendants' Motion to Stay, Memorandum in Support thereof, and Proposed Order, to be served on Defendants as follows: upon counsel in accordance with Federal Rules of Civil Procedure 5(b).

Dated: May 19, 2025

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PENN ENTERTAINMENT, INC.,

Nominal Defendant.

Case No.: 5:25-cv-02313-CH

**ORDER GRANTING STAY OF PROCEEDINGS**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2025, upon consideration of Defendants  
PENN Entertainment, Inc., Jay Snowden, Vimla Black-Gupta, Anuj Dhanda, David Handler,  
Marla Kaplowitz, Jane Scaccetti, Barbara Shattuck Kohn, Ronald Naples, and Saul Rubenstein's  
(together "Defendants") Motion to Stay, the Memorandum of Law in Support thereof, and any  
responses thereto, it is hereby **ORDERED** and **DECREED** that:

1. Defendants' Motion to Stay is **GRANTED**; and

2. This case is stayed in its entirety until further order of this Court following the submission of the report and determination of the special litigation committee constituted by PENN Entertainment, Inc.'s board of directors in response to this litigation.

**BY THE COURT:**

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Hon. Catherine Henry

**IN THE UNITED STATES DISTRICT COURT  
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LLC, HG VORA SPECIAL  
OPPORTUNITIES MASTER FUND, LTD.,  
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**MEMORANDUM OF LAW IN SUPPORT  
OF DEFENDANTS' MOTION TO STAY**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO STAY**

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### **PRELIMINARY STATEMENT**

At next month's annual meeting, the shareholders of PENN Entertainment, Inc. ("PENN" or the "Company") will elect two new directors to the two open seats on the Company's board of directors. Not one of the Company's incumbent directors will be re-seated. Both of the new directors were proposed by plaintiffs in this litigation—affiliates of the activist hedge fund HG Vora. But, refusing to take yes for an answer, plaintiffs have brought this litigation to ask the Court to create another seat on the board that does not now exist and to transform an uncontested director election into a contested one to justify the make-believe (and value-destructive) proxy fight plaintiffs have been waging against PENN.

At the core of plaintiffs' lawsuit is an alleged breach of fiduciary duty by PENN's board: plaintiffs say that the directors violated their fiduciary duties when they exercised their power under the Company's bylaws and Pennsylvania statutory law to eliminate a vacancy on the board created by the retirement of an incumbent director last month. In their complaint, plaintiffs tack on to this central theory a smattering of additional claims, including several under the federal securities laws to invoke this Court's jurisdiction, all of which derive from and are predicated upon the alleged fiduciary breach. Plaintiffs do not seek interim or injunctive relief in advance of next month's stockholder vote; they instead propose an expedited trial half a year from now.

That proposal should be denied, and this matter should be stayed. Under bedrock Pennsylvania law, fiduciary duties run only to the company—not individual shareholders—and claims of breach thus belong to and are controlled by the corporation itself. Pennsylvania's Business Corporation Law expressly empowers corporations to vest control of such litigation in the hands of a special litigation committee, and the statute provides for a mandatory stay of any shareholder-filed litigation to allow such a committee time to complete its work. That stay is



triggered here: PENN’s board has constituted an independent special litigation committee (the “SLC”) that has retained independent counsel and is now prepared to begin its work expeditiously.

No good cause exists to deny a stay. Plaintiffs concede that their fiduciary claims are derivative and that they have made no demand on the Company for the right to prosecute the Company’s claims themselves. The sole basis they invoke to justify this suit is the alleged “imminent” harm that will result from next month’s election, where plaintiffs say the shareholders will cast votes under the supposedly misleading impression that there are two open seats on the board instead of three. But plaintiffs do not seek to block that election or any relief in advance of it. There is thus zero urgency whatsoever that could override the statutorily mandated stay in favor of the special litigation committee process. And that stay logically extends to the remainder of this lawsuit. Every claim in plaintiffs’ complaint turns on whether the size of the board was properly fixed by PENN’s directors, and the only reason plaintiffs offer that it was not is the alleged fiduciary breach.

Defendants thus move the Court to stay this litigation as required by Section 1783(b) of the Pennsylvania Business Corporation Law.

### **BACKGROUND**

PENN Entertainment, Inc. is a leading entertainment and gaming company incorporated in Pennsylvania and headquartered in Berks County. PENN’s roots trace back to the Penn National Race Course, established in 1972 in Grantville, Pennsylvania by a group of Central Pennsylvania business leaders.<sup>1</sup> PENN has since grown into a publicly traded company with over 20,000 employees and the largest and most diverse gaming footprint in North America, operating 42 brick-and-mortar casinos and racetracks across 19 states (including four casinos in Pennsylvania) while

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<sup>1</sup> PENN Ent., *History*, <https://www.pennentertainment.com/corp/our-company/history> (last visited May 18, 2025).

also developing a robust online gaming and sports betting presence.<sup>2</sup>

PENN's board of directors consists of eight members with wide-ranging backgrounds, including deep expertise in the gaming industry. Seven are unaffiliated with management and independent under NASDAQ rules. In accordance with governing documents and Pennsylvania law, PENN's board is separated into three classes, with each class serving a three-year term. PENN Articles of Incorporation § 6(a); PENN Bylaws § 4.03(d). At each of PENN's annual shareholder meetings, PENN's stockholders vote on the class of directors up for election or reelection that year. PENN's 2025 annual shareholder meeting (the "Annual Meeting") is to be held on June 17, 2025 and PENN's shareholders will vote on the two individuals nominated as Class II directors.

PENN operates in a highly regulated industry and must obtain and maintain gaming licenses from state gaming authorities in each jurisdiction in which it operates. The state gaming authorities have broad discretion in issuing and renewing gaming licenses and look at, among other things, the character and integrity of the applicant. In addition, many states require PENN stockholders who own more than a certain percentage of voting stock—typically 5%—to also obtain state gaming licenses. But if such a stockholder is an institutional investor who holds the stock for passive investment purposes only—not for the purposes of, for example, changing members of the company's board or enacting other governance changes at the company—the stockholder can apply for an "institutional investor waiver" in lieu of obtaining a gaming license.<sup>3</sup>

Plaintiffs are various entities that form part of HG Vora Capital Management, LLC (collectively, "HG Vora"), a self-described "event driven" and "opportunistic" investment

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<sup>2</sup> PENN Ent., <https://www.pennentertainment.com/> (last visited May 18, 2025).

<sup>3</sup> PENN Ent., Annual Report (Form 10-K), Ex. 99.1, (Feb. 27, 2025), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000921738/000092173825000008/penn-20241231.htm>.

manager based in New York City that was fined in 2024 by the SEC for violations of the Securities Exchange Act of 1934.<sup>4</sup> HG Vora is a PENN stockholder and, as of early 2023, it held a 6.6% stake in the Company. HG Vora represented to both the SEC and state gaming authorities that its investment in PENN was passive, *i.e.*, not acquired or held for the purpose of changing or influencing the control of PENN.<sup>5</sup> Based on this representation, HG Vora succeeded in obtaining institutional investor waivers from the relevant gaming authorities.

Nevertheless, in December 2023, HG Vora told PENN that it was seeking the right to appoint two directors to the PENN board and make other changes—directly in violation of its institutional investor waivers. Ex. A at 11 (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.3, Supplemental Information Regarding Engagement with HG Vora Capital Management, LLC). A few days later, HG Vora disclosed these intentions in an SEC filing.<sup>6</sup> It also disclosed that it had increased its stake in PENN to 18.5%, consisting of ownership of 9.6% of PENN’s common stock and the remainder in derivative instruments. *Id.*

HG Vora’s filing triggered a flurry of activity from the state gaming authorities—several of which declared HG Vora’s actions impermissible and instructed PENN to limit engagement with HG Vora while HG Vora’s licensure status was under review. Ex. B at 6 (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025); Ex. A at 11 (Ex. 99.3). As a result, HG Vora had certain of its institutional investor waivers revoked and was required to apply for state gaming licenses. Ex. A at 11-12 (Ex. 99.3).

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<sup>4</sup> HG Vora, *Who We Are*, <https://www.hgvora.com/who-we-are> (last visited May 18, 2025); Securities and Exchange Commission, “SEC Charges Advisory Firm HG Vora for Disclosure Failures Ahead of Ryder Acquisition Bid,” Mar. 1, 2024, <https://www.sec.gov/newsroom/press-releases/2024-30>.

<sup>5</sup> HG Vora, Schedule 13G (Feb. 14, 2023), <https://www.sec.gov/Archives/edgar/data/921738/000121465923002499/penn213236sc13g.htm>.

<sup>6</sup> HG Vora, Schedule 13D (Dec. 28, 2023), <https://www.sec.gov/Archives/edgar/data/921738/000121465923016937/j1227232sc13d.htm>.

HG Vora did not obtain the required licenses in 2024 and therefore was not eligible to nominate director candidates for PENN's 2025 Annual Meeting. Undeterred, HG Vora announced in a January 2025 SEC filing that it had "restructure[d] its investment," in PENN, reducing its ownership of common stock to less than 5% "while maintaining [its] economic interest" through the use of derivative instruments. This restructuring was made for the express purpose of avoiding licensure requirements in the state of Massachusetts. HG Vora claimed it was thereafter free to nominate directors.<sup>7</sup>

On January 29, 2025, HG Vora announced its intention to nominate three director candidates to stand for election at PENN's 2025 Annual Meeting. It nominated Johnny Hartnett, Carlos Ruisanchez, and William Clifford. Mr. Hartnett is the former CEO of Superbet Group, a betting and gaming company, and has over 20 years of experience in the entertainment and gaming industries, including with respect to online sports betting. Ex. A at 5 (Ex. 99.1, Press Release). Mr. Ruisanchez is the founding partner of Sorelle Capital and Sorelle Hospitality, hospitality, consumer, and real estate investment companies, and has experience as the CFO of a gaming entertainment company. *Id.* Mr. Clifford is the former CFO of Gaming & Leisure Properties and the former CFO of PENN Entertainment. Ex. B at 7. He had previously sought a seat on PENN's board in 2020, and the Company declined to offer him this position after determining he was not a suitable candidate based on an evaluation of his skills and experiences against the needs of the board. *Id.*

PENN's board has for some time been working to refresh itself, and it had engaged a national search firm to identify prospective directors, focusing most recently on identifying a

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<sup>7</sup> HG Vora, Schedule 13D (Jan. 14, 2025), [https://www.sec.gov/Archives/edgar/data/921738/000121465925000546/xs1SCHEDULE\\_13D\\_X01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/921738/000121465925000546/xs1SCHEDULE_13D_X01/primary_doc.xml).

candidate with a digital background to support PENN's growing interactive and online segment. *Id.* The board promptly included all three of HG Vora's candidates in its ongoing director search process and interviewed each of them. The board determined that Mr. Hartnett's skills and profiles fit the profile of the search for a candidate with digital experience. It also determined that Mr. Ruisanchez's skills and background would be additive. Despite the Company having rejected Mr. Clifford as unsuitable in 2020, the board considered his candidacy this year, but following his interviews, it concluded that he remained unsuitable for several reasons, including: (1) Mr. Clifford lacks any digital gaming or sports betting experience and his skills and experiences are redundant with the significant financial and real estate experience already represented on the board—including with the experience of Mr. Ruisanchez; (2) while he was CFO of PENN, Mr. Clifford advocated against key initiatives to invest in properties in Pennsylvania and modernize PENN's infrastructure, software, and business to bring it into the 21st century, including the creation of a customer database and related loyalty program and the adoption of shared services, all of which were subsequently implemented at the Company and were essential in driving margin improvement; and (3) in his interviews, Mr. Clifford failed to demonstrate an appropriate level of open-mindedness about the Company's strategy. *Id.*

Hoping to avoid a costly proxy fight and to refresh the board, PENN worked to reach a resolution with HG Vora and offered to nominate Messrs. Hartnett and Ruisanchez for election to the board. But HG Vora refused to accept anything other than either (1) the appointment of all three of its nominees or (2) the appointment of two of its nominees plus certain governance and strategic changes that PENN was prohibited from discussing with HG Vora at the instruction of the state gaming authorities. *Id.* HG Vora notified PENN of this position on April 25, 2025.

That day, the board met. Barbara Shattuck Kohn and Saul Reibstein, two incumbent Class II directors whose terms expired at the 2025 Annual Meeting, determined not to stand for reelection. The board determined to nominate two of HG Vora's nominees—Messrs. Hartnett and Ruisanchez—as the Company's nominees for election to the board. Also on April 25, 2025, Ronald Naples, who had served on the board since 2013, tendered his resignation from the board, effective immediately. Having identified no suitable candidate to nominate for the vacancy created by Mr. Naples' retirement, the board voted to decrease its size from nine to eight members and to decrease the number of Class II directors from three to two. *Id.* Historically, the Company's board size has fluctuated, with the board comprising fewer than nine directors prior to 2022.

The Company issued a press release on the afternoon of Friday, April 25, 2025, announcing the changes to the board and the Company's nomination of Messrs. Hartnett and Ruisanchez for election at the 2025 Annual Meeting. On the morning of Monday, April 28, 2025, the Company filed its definitive proxy with the SEC, listing Messrs. Hartnett and Ruisanchez as the Company's nominees for the 2025 Annual Meeting. Because there are only two seats up for election at the 2025 Annual Meeting and the Company and HG Vora have nominated the same two candidates for those two seats, the Annual Meeting is not a contested election. That same morning, the Company also filed an 8-K disclosing additional information concerning the board's reduction of its size following Mr. Naples' retirement and the Company's failed attempts to reach a resolution with HG Vora. Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025).

HG Vora has filed its own proxy statement that seeks to solicit proxies for three nominees despite the fact that there are only two board seats available. Although HG Vora was notified of the board's decision to reduce its size on April 25, it did not file the instant action until May 7. The Complaint names as defendants the current members of the PENN board and Mr. Naples (the

“Director Defendants”) and names the Company as nominal defendant (together with the Director Defendants, the “Defendants”). It alleges that the board breached its fiduciary duties to the Company by voting to reduce the size of the board following Mr. Naples’ retirement (Count V). The Complaint also purports to bring additional state law claims that are duplicative of the breach-of-fiduciary-duty claim, as well as disclosure claims under the federal securities laws. Plaintiffs have made no demand on PENN’s board to bring an action.

Although the Complaint states that harm will allegedly occur at the Annual Meeting, HG Vora has determined not to seek any relief in advance thereof. MTE 4.<sup>8</sup> Instead, HG Vora filed a motion to expedite with the Court on May 14, 2025 seeking a trial in November 2025—five months after the Annual Meeting. MTE 5.

On May 8, 2025, the PENN board voted to constitute a special litigation committee to review and investigate the facts and circumstances surrounding HG Vora’s claim that the Director Defendants breached their fiduciary duties by reducing the size of the board. The board evaluated several potential candidates, conducted interviews, and selected Marc Sonnenfeld, Esq. and Richard Bazelon, Esq. On May 12, 2025, the board voted to appoint Messrs. Sonnenfeld and Bazelon to the committee. The next day, counsel for PENN informed HG Vora’s counsel that the board had formed the special litigation committee, that Defendants would oppose plaintiffs’ request for expedition, and that the action should be stayed while the special litigation committee conducts its investigation in accordance with well-established Pennsylvania corporate law.

Messrs. Sonnenfeld and Bazelon are highly respected members of the Pennsylvania Bar and experienced in SLC practice. Both are independent of PENN and the Director Defendants. Mr. Sonnenfeld practiced law at Morgan, Lewis & Bockius in Philadelphia for 50 years, retiring

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<sup>8</sup> All citations to “MTE” refer to the plaintiffs’ Mem. In Support Of Motion to Expedite at Dkt. 13.1.

from the firm in 2024. Mr. Bazelon has been practicing law since 1969 and is a founder, partner, and principal of Bazelon Less & Feldman in Philadelphia. The SLC has retained Dilworth Paxson LLP as its independent counsel and is prepared to work expeditiously to investigate the facts and circumstances surrounding plaintiffs' claim for breach of fiduciary duty.

## ARGUMENT

### **I. PLAINTIFFS' FIDUCIARY CLAIM IS SUBJECT TO A MANDATORY STAY FOR THE DURATION OF THE SLC INVESTIGATION.**

Plaintiffs allege that PENN's directors breached their fiduciary duties by voting to reduce the size of the board following Mr. Naples' retirement. Compl. ¶¶ 162-69. But plaintiffs, individual shareholders of PENN, do not have standing to bring this claim on their own behalf. PENN is a Pennsylvania corporation, and—under binding Pennsylvania statutory law—the directors of Pennsylvania corporations owe fiduciary duties only to the corporation itself, not to shareholders individually. 15 Pa. C.S. § 1717 (a “board of directors ... and individual directors” owe fiduciary duties “solely to the business corporation and not to any shareholder”). As a result, fiduciary breach claims “may be enforced directly by the corporation or may be enforced by an action in the right of the corporation”—that is, derivatively—but they “may not be enforced directly by a shareholder.” *Id.*; see also *Stilwell Value Partners I, L.P. v. Prudential Mut. Holding Co.*, 2007 WL 2345281, at \*9-11 (E.D. Pa. Aug. 15, 2007) (the “plain language of the statute precludes a direct suit for breach of fiduciary duty” by a shareholder because there “simply is no duty running from the directors to the shareholders”).

Stockholder derivative litigation is tightly governed by Pennsylvania's Business Corporation Law. See 15 Pa. C.S. §§ 1781-84. If an individual shareholder believes corporate fiduciaries have breached their duties, the shareholder must “first make[] a demand on the corporation or the board of directors requesting that the corporation bring an action” itself. 15 Pa.



C.S. § 1781(a)(1). As the comments to Section 1781 state, “a plaintiff must always demand the board of directors bring an action and allow the corporation to respond ... before the plaintiff may commence a derivative action.” 15 Pa. C.S. § 1781 comm. cmt. (2022). That is because “[d]ecisions regarding litigation by or on behalf of a corporation, including shareholder derivative actions, are business decisions as much as any other financial decisions [and are] within the province of the board of directors.” *Cuker v. Mikalauskas*, 547 Pa. 600, 611 (1997).

Section 1783 of the Business Corporation Law goes on to provide that one way a board may respond to a demand is to appoint a special litigation committee to determine whether such litigation shall proceed.<sup>9</sup> The special litigation committee must be composed of at least two individuals who “are not interested in the claims asserted” and “are capable as a group of objective judgment.” 15 Pa. C.S. § 1783(c). The committee will select independent counsel and conduct an investigation that typically involves collecting relevant documents, interviewing witnesses, and assessing the facts and law relevant to the claims. *See, e.g., Cuker*, 547 Pa. at 603-06 (describing special litigation committee’s investigation).

Where, as here, “the board of directors appoints a special litigation committee and an action is commenced before” the committee reaches its conclusion, “the court *shall* stay discovery for the time reasonably necessary to permit the committee to complete its investigation.” 15 Pa. C.S. § 1783(b)(1) (emphasis added).

Following its investigation, the special litigation committee will determine whether the Company should pursue the derivative claim presented by the stockholder. 15 Pa. C.S. § 1783(e). Should the SLC determine that it is not in the best interests of the Company to pursue the claim, the SLC or the Company must file the SLC’s written report with the Court along with a motion to

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<sup>9</sup> A board may also appoint an SLC “if a derivative action is commenced before demand has been made on the corporation or the board.” 15 Pa. C.S. § 1783(a).

dismiss the derivative claim. 15 Pa. C.S. § 1783(f).

Plaintiffs here did not make a demand before commencing this litigation. Nevertheless, and in accordance with Section 1783(a), PENN’s board of directors formed an independent special litigation committee to respond. The board endowed the SLC with the authority and responsibility to investigate the facts and circumstances surrounding plaintiffs’ claim for breach of fiduciary duty and to determine, on behalf of the board, whether the claim should proceed. Ex. C (Resols. forming SLC). The SLC is further empowered to hire independent counsel and any other experts or advisors it deems necessary, and all expenses of the SLC are to be paid by the Company. *Id.* The resolutions also direct all officers, agents, and employees of the Company to assist the SLC and provide all documents and information it requests. *Id.* As authorized by Section 1783(c)(3), the board appointed to the SLC two members who are not directors—Marc Sonnenfeld and Richard Bazelon—independent attorneys deeply experienced with SLC practice. Ex. D (Resols. appointing SLC members). The SLC has retained Dilworth Paxson LLP as its counsel, and it is prepared to proceed right away with its investigation.

A stay is appropriate to allow the SLC the time necessary to complete its work. 15 Pa. C.S. § 1783(b)(1); *Lee v. McGarry*, 2020 WL 7075633, at \*3 (W.D. Pa. Dec. 3, 2020) (noting that court granted SLC’s motion to stay); *Allegheny Cnty. Emps.-Ret. Fund v. Bertolini*, 2017 WL 11639281, at \*1 (Pa. Com. Pl. Aug. 15, 2017) (granting SLC’s motion to stay); Hinshaw & Lanciotti, 21 Standard Pennsylvania Practice 2d § 113:65 (“If the board of directors appoints a special litigation committee and an action is commenced before a determination has been made ... the court must stay discovery for the time reasonably necessary to permit the committee to complete its investigation[.]”). The mandatory discovery stay in Section 1783(b)(1) recognizes the reality that, without a stay, the SLC and the plaintiffs would engage in dual and duplicative investigation and

discovery, which would undermine the SLC's statutory mandate to consider plaintiffs' claim in the first instance. *See* 15 Pa. C.S. § 1783 comm. cmt. (2022) ("In essence, a special litigation committee is intended to function as a surrogate decision-maker, allowing the corporation to make what is fundamentally a business decision.").

In their complaint, plaintiffs alleged that demand on the board was excused. To excuse demand under Section 1781(b), a stockholder must "make[] a specific showing that immediate and irreparable harm to the business corporation" would result if the stockholder were compelled to make a demand and wait. 15 Pa. C.S. § 1781(b)(1). The purpose of this limited exception is to allow a court an opportunity to entertain an application for "an injunction to preserve the status quo." 15 Pa. C.S. § 1781 comm. cmt. (2022). Here, plaintiffs have made no showing of imminent harm and have not sought a preliminary injunction. In their complaint, they alleged that harm would befall the Company "because the shareholder vote at the upcoming 2025 Annual Meeting will otherwise take place based on materially false, misleading, and incomplete information." Compl. ¶ 109. But plaintiffs have abandoned this argument: They do not seek any relief in advance of the 2025 Annual Meeting. Instead, their motion to expedite seeks a trial in November—five full months after that meeting will have occurred. MTE 5. That plaintiffs have proposed a schedule that contemplates a resolution of this matter six months or more from now and nearly half a year after the 2025 Annual Meeting will have taken place undermines any suggestion that the time spent making a demand would have caused the Company the "immediate and irreparable harm" required to excuse demand under Section 1781(b).

Even if pre-litigation demand were excused, however, plaintiffs are still required under the statute to make a demand on the board "promptly upon commencement of the action." 15 Pa. C.S. § 1781(b)(2). This is because the statute "contemplates that the board would still be given an

appropriate time to respond and that further inquiry by the court will focus on the response of the board *or a special litigation committee* if one is appointed.” 15 Pa. C.S. § 1781 comm. cmt. (2022) (emphasis added). Plaintiffs have made no such demand and have failed to comply with Section 1781(b)(2).

A special litigation committee has now been appointed, and thus the mandatory stay contemplated by Section 1783(b)(1) is triggered by this motion. In their motion to expedite, plaintiffs say that “the irreparable harm to shareholders from a tainted electoral process ... constitutes sufficient ‘good cause’ to avoid a stay.” MTE 15. Plaintiffs cite nothing in support of this contention. That is unsurprising: Plaintiffs’ position—that any showing of alleged irreparable harm arising from alleged breaches of fiduciary duty would justify undermining the ability of an SLC to function—is flatly at odds with Pennsylvania’s statutory scheme. Under Section 1783, a special litigation committee acts as “a surrogate decision-maker,” and, “[i]f a court determines that the members of the committee met the qualifications required” by the statute, “and that the committee conducted its investigation and made its determination or recommendation in good faith, independently, and with reasonable care, it makes no sense to substitute the court’s legal judgment for the business judgment of the committee.” 15 Pa. C.S. § 1783 comm. cmt. (2022). In those circumstances, the court is required to “enforce the determination of the committee.” 15 Pa. C.S. § 1783(f)(3); *see also Cuker*, 547 Pa. at 611-12 (“Without considering the merits of the action, a court should determine the validity of the board’s decision to terminate the litigation; if that decision was made in accordance with the appropriate standards, then the court should dismiss the derivative action prior to litigation on the merits.”). In light of that statutorily imposed standard and the lack of any exigency to plaintiffs’ claims, there is no good cause to avoid the mandatory stay required under the Business Corporation Law while the SLC completes its work.

**II. THE COURT SHOULD STAY THE REMAINING CLAIMS PURSUANT TO ITS INHERENT POWER TO CONTROL ITS DOCKET.**

**A. Plaintiffs’ Count IV is duplicative of its fiduciary duty claim and should be stayed.**

Plaintiffs’ claim asserting a “Violation of Shareholder Voting Rights” (Count IV) should also be stayed pending the completion of the SLC’s investigation. Count IV states no independent cause of action; it is duplicative of plaintiffs’ breach of fiduciary duty claim (Count V). Counts IV and V rely on the same alleged facts, the same alleged injury, and seek identical relief. *Compare, e.g.*, Compl. ¶ 158 (Count IV: Violation of Shareholder Voting Rights) (“[t]he Board Reduction Scheme ... is designed to interfere with ... shareholders’ right to vote by preventing shareholders from electing all three Independent Nominees at the 2025 Annual Meeting.”), *with id.* ¶ 164 (Count V: Breach of Fiduciary Duty) (“the Board Reduction Scheme ... was enacted for the primary purpose of interfering with shareholders’ ability to effectively exercise their voting rights in a contested election for directors by eliminating a Board seat up for election after Plaintiffs had nominated a candidate to fill that seat”); *compare id.* ¶ 161 (Count IV: Violation of Shareholder Voting Rights) (seeking “declaratory and injunctive relief”), *with id.* ¶ 169 (Count V: Breach of Fiduciary Duty) (seeking “declaratory and injunctive relief”). Counts IV and V each concern the reduction of the size of the board.

Plaintiffs allege in Count IV that the “Board Reduction Scheme is invalid under Pennsylvania law” and cite to the Pennsylvania Business Corporation Law generally, but do not point to a single provision of the Business Corporation Law that any Defendant is alleged to have violated. *See id.* ¶ 158. To the contrary, the Pennsylvania Business Corporation Law and the Company’s bylaws authorize the board to change the number of directors on the board without limitation. *See* 15 Pa. C.S. § 1723 (“The number of directors shall be fixed by, or in the manner provided in, the bylaws.”); PENN Bylaws Section 4.03(a) (providing that the number of directors

“shall be fixed (and may be changed from time to time) solely by resolution of the board of directors”). Instead, Count IV simply identifies the Court’s affirmative power to adjudicate the validity of a “corporate action” under the Business Corporation Law and asks the Court to use its equitable powers to “determine the validity” of the board’s decision. *See* Compl. ¶¶ 153-57; 15 Pa. C.S. § 1793(a). But the only legal reason plaintiffs identify for the alleged invalidity of the action is that, plaintiffs say, it was the product of a breach of fiduciary duty. That is a derivative claim, as plaintiffs concede. *See id.* ¶ 166. And the Business Corporation Law provides a specific procedure for the adjudication of derivative claims: The board may appoint a special litigation committee and “the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation.” 15 Pa. C.S. § 1783(a), (b).

Litigating Count IV while the special litigation committee investigates the same facts and circumstances would intrude on the SLC’s ability to conduct its investigation. Plaintiffs cannot circumvent the SLC’s investigative and decision-making mandate under the Pennsylvania Business Corporation Law through parallel and duplicative litigation concerning the exact same facts and circumstances. Courts recognize that a stay of all claims is appropriate where, as here, a plaintiff also asserts other claims that overlap or relate to the derivative claims being investigated by a special litigation committee. *See, e.g., Al-Naimi v. Kesterson*, No. 5906-VCL, 2011 WL 400099, at \*1 (Del. Ch. Feb. 4, 2011) (staying overlapping derivative and other claims because “the SLC’s investigation into and determination with respect to the derivative claims may result in a settlement of all claims or otherwise affect the disposition of the [other] claims in the action”).

Moreover, principles of judicial economy support a stay of plaintiffs’ claims. It is well settled that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for

counsel, and for litigants.” *Cheyney State Coll. Faculty v. Hufstedler*, 703 F.2d 732, 737-38 (3d Cir. 1983) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). Absent a stay of all claims, the “simultaneous discovery of the same persons and materials by two separate sources”—*i.e.*, discovery in the instant action and cooperation with the special litigation committee’s independent investigation—would needlessly expend the time, effort, and resources of the Court, the parties, the Company, and counsel. *Abbey v. Comput. & Commc’ns Tech. Corp.*, 457 A.2d 368, 375 (Del. Ch. 1983). Allowing the SLC to conduct its investigation and report its findings to the Court will serve to clarify and may also significantly narrow the issues in the case. The SLC will have investigated the same facts and circumstances that form the basis for plaintiffs’ Count IV and the SLC’s factual and legal findings will undoubtedly affect how and whether plaintiffs’ Count IV may proceed. It would be a waste of resources to allow plaintiffs to proceed with discovery on Count IV while the SLC is performing the same work.

Plaintiffs claim that they will be harmed by a stay of the action but they cite nothing in support of that contention. MTE 15. Regardless, allowing the SLC to complete its investigation and report its findings to the Court will not cause undue delay. Plaintiffs have conceded that the case “presents narrow factual issues capable of expedient resolution.” MTE 14. The SLC has already retained independent counsel and its work is underway.

**B. Plaintiffs’ remaining Counts should be stayed.**

Plaintiffs’ remaining Counts should be stayed for the reasons stated above. A brief discussion of each follows.

***Count VI***

Plaintiffs allege that the board violated Section 1724 of the Pennsylvania Business Corporation Law and Article 6(a) of PENN’s Second Amended and Restated Articles of

Incorporation (the “Articles”), each of which provide that the classes of the board shall be “as nearly equal in number as possible.” *See* Compl. ¶¶ 9, 37, 170-79. But plaintiffs’ claim defies basic logic. PENN’s board of directors is now comprised of eight directors across three director classes. Eight is not divisible by three. As required by Pennsylvania law, and in accordance with PENN’s Articles, PENN’s directors are allocated to classes “as nearly equal in number *as possible*” for an eight-member board. 15 Pa. C.S. § 1724(b)(1) (emphasis added); Article 6(a) (emphasis added). There are three Class I directors, two Class II directors, and three Class III directors (3-2-3). *See, e.g.*, Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025). By simple arithmetic, the allocation of eight directors across three classes cannot be any closer to “as nearly equal” than 3-2-3.

The Complaint reveals plaintiffs’ true grievance: they dispute the reduction of the board size from nine to eight members. *See* Compl. ¶ 37. Count VI is thus an attempt to tack on a purported violation under Section 1724 that makes no sense under the plain language of the statute in yet another attempt to end-run the Pennsylvania Business Corporation Law’s stringent demand requirement for breach of fiduciary duty claims.

### ***Count III***

In Count III, plaintiffs allege that Defendants violated SEC Rule 14a-19 by making alleged material misstatements in PENN’s proxy card. *See* Compl. ¶¶ 144-51. Rule 14a-19 sets forth requirements for proxy solicitations in contested elections. It provides that, in a proxy contest (unless certain exemptions apply), the company’s proxy card must include (and clearly distinguish between) the slate of opposition candidates and the slate of management-supported candidates. 17 C.F.R. §§ 240.14a-19(e)(1), 240.14a-19(e)(3).

Critically, Rule 14a-19 applies *only* where there is a *contested* director election. *See Universal Proxy*, Sec. Exch. Act Release No. 34-93596, 68 Fed. Reg. 68330, Inv. Co. Act Release No. IC-34419, 2021 WL 5545055 (SEC Nov. 17, 2021). Plaintiffs concede as much. Compl. ¶



146 (“SEC Rule 14a-19 applies where (as here) there is a contested director election.”). All of plaintiffs’ allegations concerning Defendants’ purported violations of Rule 14a-19 therefore rely on the assumption that PENN’s upcoming annual shareholder meeting on June 17, 2025 is a contested election.

But unless it was a breach of fiduciary duty for the board to reduce its size, the upcoming election is indisputably *uncontested*. Absent a breach, the Director Defendants took a valid action that resulted in there being two director seats up for election at the upcoming meeting, and PENN and HG Vora have each nominated the same two director candidates for the same two available seats. Thus, absent a breach, the upcoming election is uncontested and Rule 14a-19 does not apply, making it impossible as a matter of law for Defendants to have made any material omissions or misrepresentations concerning the candidates for that election in violation of Rule 14a-19.

### ***Counts I and II***

Plaintiffs allege in Counts I and II, that Defendants’ April 25, 2025 press release and PENN’s proxy statement are materially false and misleading, in violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9. Compl. ¶¶ 111-43. Rule 14a-9 prohibits the solicitation of proxies through a communication “that is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9(a).

As shown in Appendix A attached hereto, the information that plaintiffs allege Defendants failed to disclose has in fact been publicly disclosed to PENN shareholders through PENN’s SEC filings on Form 8-K and as additional definitive proxy materials on Schedule 14A. *See also* Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025); Ex. E (PENN Ent. Form Def 14A, May 2, 2025 – Supplement); Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025). These filings

are available on PENN’s website and the SEC website. The information is part of the “total mix of information” available to shareholders, and plaintiffs will be unable to demonstrate that any of the challenged statements are materially false or misleading under Rule 14a-9. *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *see also, e.g., Savoy v. Bos. Priv. Fin. Holdings, Inc.*, 626 F. Supp. 3d 242, 250 (D. Mass. 2022) (“The total mix of information available to a shareholder also includes information outside of the proxy statement where the information is already in the public domain and readily available to shareholders.”).

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion to Stay.

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## APPENDIX A

Plaintiff's Allegations	Where disclosed by PENN	How disclosed (non-exhaustive)
<p>The Press Release and Proxy each “creates the false impression that Defendants’ decision to nominate two of the Independent Nominees for election at the 2025 Annual Meeting was the product of an agreement when it was not, especially because Defendants refused to name Clifford in their proxy materials[.]” Compl. ¶¶ 115(a), 133(a); <i>see also</i> Comp. ¶¶ 11, 91.</p>	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.1, Press Release)</p>	<p>“While we were unable to reach an agreement with HG Vora, we thank them for their input and look forward to continued engagement with all of our shareholders.”</p>
	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.3, Supplemental Information Regarding Engagement with HG Vora Capital Management, LLC)</p>	<p>“On January 29, 2025, the Company received notice ... of HG Vora’s intent to nominate three director candidates to stand for election ... William Clifford, Johnny Hartnett, and Carlos Ruisanchez (the ‘HG Vora Nominees’).”</p>
	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.2, S’holder Letter)</p>	<p>“It is important to note that we made several attempts to reach a mutually agreeable and reasonable resolution with HG Vora ... In fact, the Board offered to appoint Mr. Hartnett and Mr. Ruisanchez to the Board, effective immediately, as part of a settlement offer to HG Vora. We were disappointed that these offers were rejected.”</p>
	<p>Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025)</p>	<p>“We offered HG Vora several reasonable proposals to reach a mutually agreeable resolution, and as noted above, ultimately determined that Mr. Hartnett and Mr. Ruisanchez would be value-additive to the Board. However, HG Vora quickly rejected every one of our proposals and never offered up a counter-proposal other than the appointment of all three of its nominees or a settlement involving the appointment of two of its nominees in addition to impermissible commitments around governance and strategic changes.”</p>

<p>The Proxy and Press Release each “creates genuine confusion among the Company’s shareholders concerning how many Board seats actually exist and how many seats are properly up for election at the 2025 Annual Meeting[.]” Compl. ¶¶ 115(b), 133(b).</p>	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025)</p>	<p>“[O]n April 25, 2025, the Board (i) decreased the size of the Board from nine to eight members, (ii) decreased the number of Class II directors from three to two[.]”</p>
	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.1)</p>	<p>“The Board now comprises eight directors, seven of whom are independent.”</p> <p>“[T]he Board intends to nominate Mr. Hartnett and Mr. Ruisanchez to fill the <i>two Class II director seats available for election</i> at the Annual Meeting.” (emphasis added)</p>
	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.2)</p>	<p>“Following these two appointments, the Board will comprise of eight members, five of whom will have been added to the Board in the last five years.”</p>
	<p>Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025)</p>	<p>“Given these actions, we believe HG Vora is intent on ensuring all three of its candidates are appointed to the Board ... despite only two seats being available for election at this year’s Annual Meeting[.]”</p>
<p>The Proxy and Press Release each “omits that the reduction in seats resulted from intentional Board action, rather than occurring automatically upon the resignation of a director as ... suggest[ed][.]” Compl. ¶¶ 115(c), 133(c); <i>see also</i> Compl. ¶¶ 83, 92, 96.</p>	<p>Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025)</p>	<p>“[O]n April 25, 2025, the Board (i) decreased the size of the Board from nine to eight members, (ii) decreased the number of Class II directors from three to two[.]”</p>
	<p>Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025)</p>	<p>“[W]e [the board] determined that it is in the best interest of the Company, all shareholders and other constituents to nominate Messrs. Hartnett and Ruisanchez for election to the Board while, in the absence of a fitting third candidate, reducing the Board size to eliminate the vacancy created by the retirement of Ron Naples.”</p>
<p>The Press Release “omits disclosing the reason for the Board Reduction Scheme, including whether such reduction is intended to be temporary.” Compl. ¶¶ 115(d); <i>see also</i> Compl. ¶¶ 11, 83, 94, 133(d).</p>	<p>Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025)</p>	<p>“We have vetted HG Vora’s third nominee more than once in the past five years, including in 2020 when there was no actual, threatened or purported proxy contest. At that time, we concluded that Mr. Clifford was unsuited to serve on the Board because he did not possess the experience, skills or other characteristics necessary to make a</p>

		positive contribution to the Board or the Company. Five years later, our conclusion regarding Mr. Clifford remains the same. As a result, we determined that it is in the best interest of the Company, all shareholders and other constituents to nominate Messrs. Hartnett and Ruisanchez for election to the Board while, in the absence of a fitting third candidate, reducing the Board size to eliminate the vacancy created by the retirement of Ron Naples.”
The Press Release “did not state that Defendants had not accepted HG Vora’s third nominee, Clifford.” Compl. ¶ 11; <i>see also</i> Compl. ¶ 83.	Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.3)	“On January 29, 2025, the Company received notice ... of HG Vora’s intent to nominate three director candidates to stand for election ... William Clifford, Johnny Hartnett, and Carlos Ruisanchez (the ‘HG Vora Nominees’).”
		<p>“On April 24, 2025, representatives of the Company’s financial advisors held a call with HG Vora’s outside advisor and communicated that the Company would be willing to immediately appoint Johnny Hartnett and Carlos Ruisanchez to serve as directors of the Company based on their respective relevant qualifications and experience as part of a settlement.”</p> <p>“On April 25, 2025, HG Vora’s outside advisor communicated to representatives of the Company’s financial advisors that HG Vora had rejected this latest proposal as the basis for a potential resolution. Later that day, the Company publicly announced that ... the Company intended to nominate Johnny Hartnett and Carlos Ruisanchez for election to the Board.”</p>
	Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025)	“We have vetted HG Vora’s third nominee more than once in the past five years, including in 2020 when there was no actual, threatened or purported proxy contest. At that time, we concluded that Mr. Clifford was unsuited to serve on the Board because he did not possess the experience, skills or

		other characteristics necessary to make a positive contribution to the Board or the Company. Five years later, our conclusion regarding Mr. Clifford remains the same. As a result, we determined that it is in the best interest of the Company, all shareholders and other constituents to nominate Messrs. Hartnett and Ruisanchez for election to the Board while, in the absence of a fitting third candidate, reducing the Board size to eliminate the vacancy created by the retirement of Ron Naples.”
	Ex. E (PENN Ent. Form Def 14A, Supplement, May 2, 2025)	“The two candidates whom the Company’s Board of Directors has nominated for election at the Annual Meeting, Messrs. Johnny Hartnett and Carlos Ruisanchez, were originally recommended for nomination by HG Vora Special Opportunities Master Fund, Ltd.”
<p>“[T]he Definitive Proxy does not mention that Hartnett and Ruisanchez were first proposed as candidates by HG Vora. By omitting reference to HG Vora, this statement creates the materially misleading impression that no dispute exists between the Company and HG Vora.” Compl. ¶ 98.</p> <p>The Press Release “did not disclose that the nominees, in fact, had been originally nominated by HG Vora.” Compl. ¶ 11.</p>	Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.3)	“On January 29, 2025, the Company received notice ... of HG Vora’s intent to nominate three director candidates to stand for election ... William Clifford, Johnny Hartnett, and Carlos Ruisanchez (the ‘HG Vora Nominees’).”
	Ex. E (PENN Ent. Form Def 14A, Supplement, May 2, 2025)	“The two candidates whom the Company’s Board of Directors has nominated for election at the Annual Meeting, Messrs. Johnny Hartnett and Carlos Ruisanchez, were originally recommended for nomination by HG Vora Special Opportunities Master Fund, Ltd.”
“[T]he Supplemental Proxy omits the fact that HG Vora had nominated <i>three</i> individuals.” Compl. ¶ 106.	Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025 – Ex. 99.3)	“On January 29, 2025, the Company received notice ... of HG Vora’s intent to nominate three director candidates to stand for election ... William Clifford, Johnny Hartnett, and Carlos Ruisanchez (the ‘HG Vora Nominees’).”

		“During such conversations HG Vora’s outside advisor indicated that a settlement with HG Vora would need to involve either the appointment of <i>all three director candidates nominated by HG Vora</i> or the appointment of two director candidates nominated by HG Vora plus additional commitments ...” (emphasis added)
The Press Release did not “disclose whether the Board voted to eliminate the ninth Board seat.” Compl. ¶ 83.	Ex. A (PENN Ent. Form 8-K, Apr. 28, 2025)	“[O]n April 25, 2025, the Board (i) decreased the size of the Board from nine to eight members, (ii) decreased the number of Class II directors from three to two[.]”
	Ex. B (PENN Ent. Form Def 14A, S’holder Letter, May 15, 2025)	“As a result, we determined that it is in the best interest of the Company, all shareholders and other constituents to nominate Messrs. Hartnett and Ruisanchez for election to the Board while ... reducing the Board size to eliminate the vacancy created by the retirement of Ron Naples.”



# **EXHIBIT A**

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 8-K**

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**CURRENT REPORT**  
**PURSUANT TO SECTION 13 OR 15(D) OF**  
**THE SECURITIES EXCHANGE ACT OF 1934**

Date of report (Date of earliest event reported): **April 25, 2025**

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**PENN Entertainment, Inc.**

(Exact Name of Registrant as Specified in Charter)

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**Pennsylvania**  
(State or Other Jurisdiction of  
Incorporation)

**0-24206**  
(Commission File Number)

**23-2234473**  
(I.R.S. Employer Identification No.)

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

**610-373-2400**  
Registrant's Telephone Number, Including Area Code

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(Former name, former address and former fiscal year, if changed since last report)

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	PENN	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2 of this chapter).

Emerging growth company ☐

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

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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On April 25, 2025, Ronald J. Naples resigned from the Board of Directors (the “Board”) of PENN Entertainment, Inc. (the “Company”) effective immediately. Also on April 25, 2025, Barbara Shattuck Kohn and Saul Reibstein notified the Board of their respective decision not to stand for reelection to the Board at the expiration of their respective current term at the Company’s 2025 annual meeting of shareholders (the “2025 Annual Meeting”). Ms. Kohn will continue to serve as the Lead Independent Director, a Class II director, Chair of the Board’s Compensation Committee and a member of the Board’s Audit Committee until the 2025 Annual Meeting. Mr. Reibstein will continue to serve as a Class II director and a member of the Board’s Audit Committee and Compensation Committee until the 2025 Annual Meeting. Neither Mr. Naples’ decision to resign from the Board nor Ms. Kohn’s and Mr. Reibstein’s respective decision to not stand for reelection was the result of any dispute or disagreement with the Company.

In connection with Mr. Naples’ resignation from the Board and Ms. Kohn’s and Mr. Reibstein’s respective decision not to stand for reelection, on April 25, 2025, the Board (i) decreased the size of the Board from nine to eight members, (ii) decreased the number of Class II directors from three to two, (iii) appointed Mr. Naples to serve as a director emeritus, effective immediately until January 3, 2026 and (iv) appointed each of Ms. Kohn and Mr. Reibstein to serve as a director emeritus, effective from the expiration of their respective term as a director at the 2025 Annual Meeting until January 3, 2026.

On April 25, 2025, the Company issued a press release, a copy of which is attached as Exhibit 99.1 and incorporated by reference in this Item 5.02, announcing Mr. Naples’ retirement from the Board, Ms. Kohn’s and Mr. Reibstein’s respective decision not to stand for reelection to the Board and the Board’s intent to nominate Johnny Hartnett and Carlos Ruisanchez for election to the Board at the 2025 Annual Meeting.

**Item 7.01. Regulation FD Disclosure.**

On April 28, 2025, the Board issued a letter to shareholders in connection with the Company’s filing of its definitive proxy statement for the 2025 Annual Meeting, a copy of which is attached as Exhibit 99.2 and incorporated by reference in this Item 7.01.

In addition, the Company is providing supplemental information regarding its and its advisors’ engagement with HG Vora Capital Management, LLC and its advisors, which supplemental information is attached as Exhibit 99.3 and incorporated by reference into this Item 7.01.

The information in this Item 7.01 of this Current Report on Form 8-K, including Exhibits 99.2 and 99.3 hereto, is being furnished to the Securities and Exchange Commission and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section. This information shall not be incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference to such filing.

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**Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Press Release, dated April 25, 2025, issued by PENN Entertainment, Inc.</u></a>
<a href="#"><u>99.2</u></a>	<a href="#"><u>Shareholder Letter, dated April 28, 2025, issued by the Board of Directors of PENN Entertainment, Inc. (furnished under Item 7.01)</u></a>
<a href="#"><u>99.3</u></a>	<a href="#"><u>Supplemental Information Regarding Engagement with HG Vora Capital Management, LLC (furnished under Item 7.01)</u></a>
104	Cover Page Interactive Data File (formatted as Inline XBRL)

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**SIGNATURES**

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

Date: April 28, 2025

PENN ENTERTAINMENT, INC.

By: /s/ Christopher Rogers

Christopher Rogers

Executive Vice President, Chief Strategy and Legal Officer and  
Secretary

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**PENN Entertainment Announces Board Refreshment**

**WYOMISSING, Pa. – April 25, 2025** – PENN Entertainment, Inc. (“PENN” or the “Company”) (Nasdaq: PENN) today announced that it intends to nominate Johnny Hartnett and Carlos Ruisanchez for election to its Board of Directors following discussions with HG Vora Capital Management, LLC (“HG Vora”). Ron Naples has informed the Board that he will retire from the Board, effective immediately. Barbara Shattuck Kohn and Saul Reibstein have notified the Company that they will not stand for reelection at the 2025 Annual Meeting of Shareholders. The Board now comprises eight directors, seven of whom are independent.

Following review by the Board’s Nominating and Corporate Governance Committee, and based on the nominees’ relevant qualifications and experience, the Board intends to nominate Mr. Hartnett and Mr. Ruisanchez to fill the two Class II director seats available for election at the Annual Meeting. The Company remains focused on realizing the significant value creation opportunity across the business, and the Board believes a costly and distracting proxy fight is not in the best interests of PENN and its shareholders.

The Board issued the following statement:

We look forward to benefitting from Johnny’s and Carlos’s fresh perspectives as we enter into a critical phase for the business. The Board continues to believe there is significant opportunity for value creation at PENN, particularly within our Interactive segment. Johnny and Carlos bring critical expertise and experience in the gaming industry, across both digital and retail, that are aligned with the Board’s priorities and are tailored to the opportunities in front of us. While we were unable to reach an agreement with HG Vora, we thank them for their input and look forward to continued engagement with all of our shareholders. We thank Ron, Saul and Barbara for their many years of distinguished service to the Board and our Company and we are eager to begin working with our new directors to drive profitable growth for the benefit of all PENN shareholders.

**Carlos A. Ruisanchez**

Carlos A. Ruisanchez is the Chief Executive Officer of Sorelle Capital and President of Sorelle Hospitality, family office firms focused on investing and developing hospitality, consumer and real estate businesses. Prior to Sorelle, he served as President and Chief Financial Officer of Pinnacle Entertainment, Inc., a leading gaming entertainment company, until its sale in 2018. He joined Pinnacle in 2008 as Executive Vice President, Strategic Planning and Development. He became Pinnacle’s Chief Financial Officer in 2011, President and Chief Financial Officer in 2013, and board member in 2016. Prior to joining Pinnacle Entertainment, Inc., Mr. Ruisanchez was Senior Managing Director at Bear Stearns & Co., Inc., an investment banking firm, where he held various positions from 1997 to 2008. He is an independent board member of Cedar Fair Entertainment Company.

**Johnny Hartnett**

Johnny Hartnett joined the board of Superbet Group in January 2024, after a successful mandate as Chief Executive Officer of the company between 2019 - 2023. Under Mr. Hartnett’s leadership, Superbet registered remarkable results in terms of market growth, transformation of its proprietary product & technology platforms and the creation of Happening, the Group’s dedicated tech company. Prior to joining Superbet, Mr. Hartnett spent 20 years working in the Flutter Group, where he held multiple leadership positions as COO of Sportsbet (Australia), MD of Paddy Power Betfair Online and Flutter International divisions including leading the Group’s M&A endeavors.

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**About PENN Entertainment, Inc.**

PENN Entertainment, Inc., together with its subsidiaries (“PENN,” or the “Company”), is North America’s leading provider of integrated entertainment, sports content, and casino gaming experiences. PENN operates in 28 jurisdictions throughout North America, with a broadly diversified portfolio of casinos, racetracks, and online sports betting and iCasino offerings under well-recognized brands including Hollywood Casino®, L’Auberge®, ESPN BET™, and theScore BET Sportsbook and Casino®. PENN’s ability to leverage its partnership with ESPN, the “worldwide leader in sports,” and its ownership of theScore™, the top digital sports media brand in Canada, is central to the Company’s highly differentiated strategy to expand its footprint and efficiently grow its customer ecosystem. PENN’s focus on organic cross-sell opportunities is reinforced by its market-leading retail casinos, sports media assets, and technology, including a proprietary state-of-the-art, fully integrated digital sports and iCasino betting platform, and an in-house iCasino content studio (PENN Game Studios). The Company’s portfolio is further bolstered by its industry-leading PENN Play™ customer loyalty program, offering its approximately 32 million members a unique set of rewards and experiences.

**Forward Looking Statements**

This press release contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements can be identified by the use of forward-looking terminology such as “expects,” “believes,” “estimates,” “projects,” “intends,” “plans,” “goal,” “seeks,” “may,” “will,” “should,” or “anticipates” or the negative or other variations of these or similar words, or by discussions of future events, strategies or risks and uncertainties. Specifically, forward-looking statements include, but are not limited to, statements regarding: the Company’s expectations of future results of operations and financial condition, including, but not limited to, projections of revenue, Adjusted EBITDA, Adjusted EBITDAR and other financial measures; the assumptions provided regarding the guidance, including the scale and timing of the Company’s product and technology investments; the Company’s expectations regarding results and customer growth and the impact of competition in retail/mobile/online sportsbooks, iCasino, social gaming, and retail operations; the Company’s development and launch of its Interactive segment’s products in new jurisdictions and enhancements to existing Interactive segment products, including the content for the ESPN BET and theScore BET and the further development of ESPN BET and theScore BET on our proprietary player account management system and risk and trading platforms; the benefits of the Sportsbook Agreement between the Company and ESPN; the Company’s expectations regarding its Sportsbook Agreement with ESPN and the future success of ESPN BET; the Company’s expectations with respect to the integration and synergies related to the Company’s integration of theScore and the continued growth and monetization of the Company’s media business; the Company’s expectations that its portfolio of assets provides a benefit of geographically-diversified cash flows from operations; management’s plans and strategies for future operations, including statements relating to the Company’s plan to expand gaming operations through the implementation and execution of a disciplined capital expenditure program at our existing properties, the pursuit of strategic acquisitions and investments, and the development of new gaming properties, including the development projects and the anticipated benefits; improvements, expansions, or relocations of our existing properties; entrance into new jurisdictions; expansion of gaming in existing jurisdictions; strategic investments and acquisitions; cross-sell opportunities between our retail gaming, online sports betting, and iCasino businesses; our ability to obtain financing for our development projects on attractive terms; the timing, cost and expected impact of planned capital expenditures on the Company’s results of operations; and the actions of regulatory, legislative, executive, or judicial decisions at the federal, state, provincial, or local level with regard to our business and the impact of any such actions.

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Such statements are all subject to risks, uncertainties and changes in circumstances that could significantly affect the Company's future financial results and business. Accordingly, the Company cautions that the forward-looking statements contained herein are qualified by important factors that could cause actual results to differ materially from those reflected by such statements. Such factors include: the effects of economic and market conditions in the markets in which the Company operates or otherwise, including the impact of global supply chain disruptions, price inflation, rising interest rates, slowing economic growth, and geopolitical and regulatory uncertainty; competition with other entertainment, sports content, and gaming experiences; the timing, cost and expected impact of product and technology investments; risks relating to operations, permits, licenses, financings, approvals and other contingencies in connection with growth in new or existing jurisdictions; our ability to successfully acquire and integrate new properties and operations and achieve expected synergies from acquisitions; the availability of future borrowings under our Amended Credit Facilities or other sources of capital to enable us to service our indebtedness, make anticipated capital expenditures or pay off or refinance our indebtedness prior to maturity; the impact of indemnification obligations under the Barstool SPA; our ability to achieve the anticipated financial returns from the Sportsbook Agreement with ESPN, including due to fees, costs, taxes, or circumstances beyond the Company's or ESPN's control; the occurrence of any event, change or other circumstances that could give rise to the right of one or both of the Company and ESPN to terminate the Sportsbook Agreement between the companies; the ability of the Company and ESPN to agree to extend the initial 10-year term of the Sportsbook Agreement on mutually satisfactory terms, if at all, and the costs and obligations of such terms if agreed; the outcome of any legal proceedings that may be instituted against the Company, ESPN or their respective directors, officers or employees; the ability of the Company or ESPN to retain and hire key personnel; the impact of new or changes in current laws, regulations, rules or other industry standards; the impact of activist shareholders; our ability to maintain our gaming licenses and concessions and comply with applicable gaming law, changes in current laws, regulations, rules or other industry standards, and additional factors described in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, each as filed with the U.S. Securities and Exchange Commission. The Company does not intend to update publicly any forward-looking statements except as required by law. Considering these risks, uncertainties and assumptions, the forward-looking events discussed in this press release may not occur.

**Contact:**

Mike Nieves  
SVP, Finance & Treasurer  
PENN Entertainment, Inc.  
610-373-2400

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Dear Fellow Shareholder,

On behalf of the Board of Directors, we thank you for your continued investment in PENN Entertainment. As stewards of the Company's long-term success, we are committed to providing rigorous oversight and disciplined leadership. Operating in a highly regulated and increasingly complex industry, we recognize that sustainable growth demands not only strategic execution, but also the highest standards of compliance, integrity, and operational excellence. We believe that our established retail business and growing digital business, both powered by our differentiated omnichannel strategy, will deliver meaningful value over the long-term. We are proud of the progress made this past year and remain focused on positioning PENN for enduring value creation in an evolving competitive landscape.

Today we filed our Definitive Proxy Statement in connection with our upcoming Annual Meeting of Shareholders, to be held on June 17, 2025. This follows an announcement we made on Friday, April 25, regarding changes to our Board of Directors. We are writing to provide additional context regarding these changes.

Our core retail business is strong and growing. We have four exciting retail growth projects currently under construction, all being delivered on or ahead of schedule and on budget, and just recently we announced the land-side relocation of Ameristar Council Bluffs, a new development project which, in addition to our other projects, we expect will generate strong returns and serve as a greater catalyst for PENN's retail segment. Our retail business is resilient, and we believe our industry-leading, tax-adjusted margins position us to navigate any potential economic downturn.

Supported by well-known brands, differentiated IP, a leading partner in ESPN, a fully-owned technology stack and newly recruited, industry-leading talent, our digital business is continuing to evolve as we work tirelessly to deliver the tremendous value we believe is inherent in the business. We are encouraged by the recent successful launch of our standalone iCasino offerings, Hollywood iCasino in Michigan, Pennsylvania and New Jersey, and theScore Casino in Ontario. We are confident that our digital business is nearing an inflection point, and we anticipate each quarter of 2025 to deliver a lower loss sequentially throughout the year and our Interactive division to be profitable in 2026 and beyond.

Against this backdrop, your Board regularly considers director candidates and evaluates its composition to ensure it is purpose-built for our business strategy and evolving industry dynamics. Earlier this year, the Company received notice from HG Vora that it had nominated director candidates to our Board. The Board's Nominating and Corporate Governance Committee subsequently reviewed HG Vora's nominees in line with PENN's normal evaluation procedures, including conducting thorough interviews with all nominees.

Following this evaluation, the Board determined that Johnny Hartnett and Carlos Ruisanchez would bring skills and experience that would be additive to the Board, particularly as PENN enters its next stage of value creation. Mr. Hartnett has extensive experience driving growth at leading international online sports betting, entertainment and gaming businesses, and Mr. Ruisanchez has significant financial and executive experience within our industry in addition to public company board experience.

We made this determination for several reasons. Firstly, because we value the input of our shareholders, including with regard to Board composition and representation. Secondly, because we are open-minded regarding director refreshment and value the addition of insightful, fresh perspectives in the Boardroom. Following these two appointments, the Board will comprise of eight members, five of whom will have been added to the Board in the last five years. Thirdly, and importantly, the Board believes a costly and distracting proxy fight is not in the best interests of PENN and its shareholders – particularly at such an important inflection point for the business.

It is important to note that we made several attempts to reach a mutually agreeable and reasonable resolution with HG Vora. Details of our engagement, as well as the regulatory constraints governing our ability to interact with HG Vora and the parameters for any potential resolution, are outlined in the background information filed in conjunction with this letter. In fact, the Board offered to appoint Mr. Hartnett and Mr. Ruisanchez to the Board, effective immediately, as part of a settlement offer to HG Vora. We were disappointed that these offers were rejected. Nevertheless, the Board enthusiastically nominated both Mr. Hartnett and Mr. Ruisanchez, as discussed above, and we look forward to welcoming them to the Board, while continuing our dialogue with HG Vora and all PENN shareholders.

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Your Board is laser focused on successfully executing PENN's strategy to deliver long-term value creation for the benefit of all shareholders. We are confident that we will benefit from the skills and experience of our new directors as we steward PENN towards the multi-year growth and value creation period we see ahead.

Thank you for your investment in PENN and your continued support.

Sincerely,

The Board of Directors of PENN Entertainment

P 610.373.2400  
825 Berkshire Blvd.  
Wyomissing, PA 19610  
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**Exhibit 99.3**

The summary below provides additional information to shareholders of PENN Entertainment, Inc. (the “Company”) regarding significant communication and interactions between the Company and HG Vora Capital Management, LLC (“HG Vora”). This summary does not purport to catalogue every conversation of, or among, members of the Company’s Board of Directors (the “Board”), the Company’s management, the Company’s advisors and representatives of HG Vora and its advisors.

The Company maintains an active shareholder engagement program and interacts with its shareholders on a periodic basis to solicit their insights and feedback on a range of topics. The Company has had discussions with HG Vora from time to time as part of its regular shareholder engagement for several years prior to 2023.

In the first half of 2023, members of the senior leadership team of the Company, including Jay Snowden, the Company’s Chief Executive Officer, and Felicia Hendrix, the Company’s Chief Financial Officer, and members of the Board, including David Handler, Chairman of the Board, held multiple meetings with representatives of HG Vora, including Parag Vora, Portfolio Manager and Founding Partner of HG Vora, and Justin Kerber, an investment professional from HG Vora. During such meetings, among other things, representatives of HG Vora conveyed their views that the Company should undertake meaningful share repurchases. The representatives of the Company conveyed HG Vora’s views to the Board. In particular, on May 9, 2023, during a meeting with Messrs. Vora and Kerber, Mr. Snowden received a presentation from HG Vora suggesting that the Company implement a significant leveraged recapitalization as a way to increase the Company’s share price by repurchasing up to 50% of the Company’s outstanding shares of common stock at a premium to then-current market prices. Mr. Snowden shared this presentation with the Board.

In August 2023 following the Company’s announcement that it had entered into an exclusive online sports betting agreement with ESPN to launch ESPN Bet and that it had divested Barstool Sports, Inc., members of the Company’s senior management team held multiple meetings with Mr. Kerber. During such meetings, among other things, Mr. Kerber expressed enthusiasm for the ESPN Bet transaction.

On September 12, 2023, HG Vora sent a letter to the Board noting, among other things, its “deep experience investing in the casino and online gaming sectors” and its desire to work with the Board to address the following topics: investment in interactive strategy, the ESPN Bet transaction, capital allocation, Board oversight and corporate governance and shareholder alignment. HG Vora also reiterated its proposal that PENN embark on a significant stock repurchase program. In response to such letter, Mr. Handler invited representatives of HG Vora to attend a 90-minute segment of the Board’s regularly scheduled upcoming meeting to communicate their views directly to the full Board. On September 19, 2023, representatives of HG Vora, including Messrs. Vora and Kerber, Mandy Lam, General Counsel of HG Vora, and Marcus Dunlop, an investment professional at HG Vora, attended a portion of a Board meeting and presented their views to the Board during which they expressed, among other things, support for the Company’s partnership with ESPN. The representatives of HG Vora also reiterated their view that the Company’s share price was undervalued and that the Company should buy back more stock.

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On October 26, 2023, in order to facilitate continued conversations between the Company and HG Vora, the Company and HG Vora entered into a non-disclosure agreement to “wall cross” HG Vora with regard to receiving HG Vora’s input on the Company’s quarterly earnings materials to refine messaging to the Company’s investors. From October 27, 2023 to November 2, 2023, representatives of HG Vora discussed the Company’s upcoming earnings materials with the Company’s senior management.

On October 31, 2023, Messrs. Handler and Snowden had a conversation with representatives of HG Vora, including Messrs. Vora, Kerber and Dunlop, during which the representatives of HG Vora reiterated their view that the Company should aggressively pursue share repurchases through a tender offer or accelerated share repurchase plan, citing the Company’s low traditional leverage. In response, Messrs. Handler and Snowden noted that the Company’s lease-adjusted leverage - which the ratings agencies, sell-side analysts, state regulators and lenders use to analyze the Company’s leverage profile - was significantly higher. The HG Vora representatives then suggested that the Company should not consider the Company’s lease obligations as debt and instead focus predominantly on traditional debt leverage and afford less consideration to the Company’s rent obligations, lease adjusted leverage and any impact to the Company’s credit ratings. The representatives of HG Vora also suggested that the Company should consider pausing or cancelling its previously announced retail growth projects, about which the HG Vora representatives were not enthusiastic.

On December 18, 2023, Mr. Snowden met with Messrs. Vora and Kerber, during which meeting Mr. Vora stated that HG Vora was seeking the right to Board seats and other changes to the Board structure. On December 19, 2023, Ms. Lam sent an email to Mr. Snowden on behalf of HG Vora memorializing the requests made by Messrs. Vora and Kerber the prior evening, including the right of HG Vora to appoint two directors to the Board, the establishment of a new Board committee focused on capital allocation chaired by one of the directors appointed by HG Vora and that one of the directors appointed by HG Vora be appointed to the Board’s Nominating and Corporate Governance Committee. Between December 19, 2023 and December 23, 2023, representatives of Wachtell Lipton communicated with Ms. Lam and representatives of Ropes & Gray LLP, outside counsel to HG Vora, with respect to HG Vora’s requests, including that the requests were inconsistent with the passive investor waivers which had been granted to HG Vora by state gaming authorities.

On December 28, 2023, HG Vora filed a Schedule 13D with the SEC, disclosing, among other things, that it held the economic equivalent of an 18.5% position in the Company’s common stock. The filing also disclosed that representatives of HG Vora had discussed with the Company’s management and Board a range of topics, and that HG Vora had requested that the Company afford them the right to designate directors to the Board.

Between January 4, 2024 and February 2, 2024, Christopher Soriano, Vice President and Chief Compliance Officer of the Company received multiple communications from multiple state gaming authorities directed to HG Vora or its outside regulatory counsel alleging or finding that HG Vora had taken actions with respect to the Company that were in contravention of applicable state gaming requirements, specifically the passive investor waivers which had been granted to HG Vora by state gaming authorities. In response to HG Vora’s actions, certain state gaming regulators rescinded HG Vora’s institutional investor waivers. In addition, the Company was advised by certain gaming regulators that outreach by HG Vora seeking to influence or affect the affairs or operations of the Company was not permissible until HG Vora was licensed or had otherwise complied with applicable state gaming laws and regulations, and the Company was asked by certain regulators to apprise them of communications between the Company and HG Vora.

Accordingly, on February 7, 2024, the deadline for shareholders to nominate director candidates for the 2024 Annual Meeting passed without a nomination being made.

In May, August, September and November 2024, the Company's senior management, including Mr. Snowden and Ms. Hendrix, spoke with representatives of HG Vora regarding PENN's operational and financial performance as part of the Company's customary shareholder engagement.

On January 14, 2025, HG Vora filed Amendment No. 3 to its Schedule 13D filing with the SEC. The filing disclosed that one state gaming regulatory authority had informed HG Vora that it would not be able to complete its licensure review of HG Vora by the Company's deadline for submitting nominations to the Board, and therefore HG Vora was prohibited from submitting advance notice to nominate directors to the Board. The filing further disclosed that on January 13, 2025, HG Vora reduced its voting and dispositive power with respect to the Company's common stock to less than 5%, while maintaining its economic interest. HG Vora reported that, as a result, it was no longer restricted under the applicable gaming regulations in any state where the Company operates from submitting advance notice of recommended Board nominees, and indicated that it planned to submit such advance notice to the Company.

On January 29, 2025, the Company received notice from a representative of Cadwalader, Wickersham & Taft LLP, outside counsel to HG Vora, of HG Vora's intent to nominate three director candidates to stand for election to the Board at the Company's 2025 Annual Meeting—William Clifford, Johnny Hartnett, and Carlos Ruisanchez (the "HG Vora Nominees"). HG Vora also issued a press release announcing the nomination of the HG Vora Nominees to the Board. Later that day, the Company issued a press release confirming receipt of the notice and announced that the Board's Nominating and Corporate Governance Committee would carefully review HG Vora's proposed director nominees, in line with the Company's normal evaluation procedures, and present its formal recommendation regarding the election of directors in the Company's proxy materials.

On February 14, 2025, representatives of the Company's financial advisor held a call with Mr. Kerber and HG Vora's outside advisor. The Company's financial advisor informed Messrs. Kerber and HG Vora's outside advisor that the Company intended to conduct interviews of the HG Vora Nominees, consistent with the Board's standard evaluation procedures.

Between March 3, 2025 and March 11, 2025, independent directors of the Company serving on the Nominating and Corporate Governance Committee, Mr. Snowden and Thomas Auriemma, the independent Chairman of the Company's Compliance Committee, and, in the case of Mr. Ruisanchez, Mr. Soriano conducted interviews of each of the HG Vora Nominees separately. Such interviews were conducted to evaluate the experience, skills, qualifications and other attributes of the HG Vora Nominees' candidacy for service on the Board.

On March 24, 2025, Mr. Soriano had a discussion with a gaming regulatory authority in a state in which HG Vora is required to be licensed in order to be an active investor and which had requested updates on any communications between the Company and HG Vora. During the call, Mr. Soriano indicated that the Company's advisors were planning to engage in a discussion the following day with HG Vora, which could include potential settlement negotiations. The regulatory authority advised Mr. Soriano that, under terms of the interim authorization that HG Vora had requested to permit it to nominate candidates to the election of the Board, HG Vora was precluded from being granted or requesting certain governance-related rights as a result of such negotiations. The representative then confirmed to Mr. Soriano that such conditions and restrictions would also be communicated to HG Vora.

Between March 25, 2025 and April 24, 2025, at the direction of the Board, representatives of the Company's financial advisors held multiple calls with HG Vora's outside advisor and offered multiple potential resolutions with HG Vora that would avoid a costly and distracting proxy fight. During such conversations HG Vora's outside advisor indicated that a settlement with HG Vora would need to involve either the appointment of all three director candidates nominated by HG Vora or the appointment of two director candidates nominated by HG Vora plus additional commitments by the Company to review the Company's strategy with regards to capital allocation, asset configuration, competitive landscape and consolidation opportunities with financial advisors who would be publicly identified, amongst other things. The Company's financial advisors reiterated to HG Vora's outside advisor that the Company and HG Vora were not permitted under applicable gaming laws and regulations to enter into any agreement with respect to the governance of the Company. On April 24, 2025, representatives of the Company's financial advisors held a call with HG Vora's outside advisor and communicated that the Company would be willing to immediately appoint Johnny Hartnett and Carlos Ruisanchez to serve as directors of the Company based on their respective relevant qualifications and experience as part of a settlement. On April 25, 2025, HG Vora's outside advisor communicated to representatives of the Company's financial advisors that HG Vora had rejected this latest proposal as the basis for a potential resolution. Later that day, the Company publicly announced that Ron Naples had informed the Board that he would retire from the Board, effective immediately, Barbara Shattuck Kohn and Saul Reibstein had notified the Company that they would not stand for reelection at the Company's 2025 Annual Meeting and the Company intended to nominate Johnny Hartnett and Carlos Ruisanchez for election to the Board.

# **EXHIBIT B**

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

**SCHEDULE 14A**

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES  
EXCHANGE ACT OF 1934

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement  
☐ **Confidential, For Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))  
☐ Definitive Proxy Statement  
☒ Definitive Additional Materials  
☐ Soliciting Material Under Rule 14a-12

**PENN ENTERTAINMENT, INC.**  
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.  
☐ Fee paid previously with preliminary materials.  
☐ Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11.



On May 15, 2025, PENN Entertainment, Inc. (the “Company”) issued the following fact sheet and press release containing a letter to shareholders from the Board of Directors of the Company.

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**PENN Entertainment Sends Letter to Shareholders***Reiterates Commitment to Creating Value for All Shareholders*

WYOMISSING, Pa. – May 15, 2025 – PENN Entertainment, Inc. (Nasdaq: PENN) (“PENN” or the “Company”) today issued the following letter to shareholders.

The full text of the letter follows:

Dear Fellow Shareholder,

We are writing to provide an important update on the Company’s performance, progress on its key strategic priorities to drive shareholder value and significant efforts to reach a mutually agreeable and reasonable resolution with HG Vora Capital Management, LLC (“HG Vora”).

Our industry is undergoing a fundamental transformation. Customers are increasingly looking for online experiences, and the digital space is the core driver of meaningful industry growth. Through the direction and oversight of the Board of Directors and management team, respectively, PENN has been a pioneer in transforming its business to build a digital presence that enables us to engage with a younger audience outside of PENN’s traditional channels and demographics. Simultaneously, we have taken – and continue to take – actions to drive growth, enhance profitability, generate robust free cash flow and return capital to shareholders.

PENN’s omni-channel growth strategy is comprehensive and holistic – designed to not only capture the growth opportunities in the evolving digital environment, but also to nurture and advance our market-leading retail footprint. By reaching new and existing customers in every space available, we are moving forward with a distinct competitive advantage to our peers. We believe this differentiated approach is essential to delivering sustainable long-term value for our shareholders – which is our core focus and commitment.

This strategy is overseen by a Board of Directors with wide-ranging backgrounds including deep expertise in our industry. Importantly, this group of leaders operates on a long-term time horizon and with shareholders front and center. After engaging extensively with shareholders including HG Vora, our Board has nominated two of HG Vora’s nominees for election at the June 2025 Annual Meeting, while two incumbent directors will step down and one has recently decided to retire. These decisions were made following a process which involved (a) thoughtful consideration of the range of skills and backgrounds required to oversee risk and strategy at the Company, (b) the engagement of an outside search firm and (c) constant adherence to the regulatory requirements of our business across the country.

**Our Omni-channel Strategy Will Deliver Sustainable Shareholder Value**

In today’s landscape, digital connectivity to customers is critical to maintaining competitive positioning. Our omni-channel strategy is at the forefront of our industry, with the right brands, technology, scale and infrastructure to succeed. PENN’s omni-channel strategy is already delivering results across our portfolio:<sup>1</sup>

- **Growing our loyal customer base:** Our PENN Play loyalty member base has grown to over 32 million, up 10% year-over-year
- **Attracting younger customers:** The average age of our customers has decreased from 53 to 44 since 2019<sup>2</sup>

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<sup>1</sup> Metrics as of December 31, 2024.

<sup>2</sup> Average age of customers in 12-month active database.

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- **Attracting online customers near PENN's retail locations:** 34% of our new, digitally acquired customers are located within 50 miles of a property, highlighting our ability to capture meaningful additional market share through our cross-sell efforts
- **Driving cross-sell opportunities:** Customer conversion from online-to-retail has grown significantly

At the same time, PENN benefits from the nation's largest and most geographically diversified collection of regional assets in the industry, spanning 42 properties across 19 states. Our retail business has the highest tax-adjusted EBITDAR margins in the industry and generates highly predictable and stable cash flows from a growing customer base. The strength of PENN's retail business is evidenced by our recent results:

- **Strong market share growth:** 14 of 17 regional markets not impacted by new supply delivered year-over-year market share growth in Q1 2025
- **Industry-leading margins:** In 2024, we delivered ~65% tax-adjusted EBITDAR margins<sup>3</sup>, far outperforming our peers
- **Robust cash flow generation:** Our highly predictable, stable cash flows benefit from geographic diversification and a strong, growing customer base

Four of our retail development projects – all of which are on or ahead of schedule and on budget – are nearing completion over the next 12 months. These are expected to deliver strong returns and provide a catalyst for further retail-digital synergy accretion.

**Our growing Interactive segment has strong momentum, is on track for profitability later this year and has an immense opportunity for value upside**

Sports betting is the primary driver of customer acquisition for PENN, and the Company is focused on realizing the full value of our partnership with ESPN. We recognize that the execution of our digital strategy has introduced near-term volatility in our operational performance. However, our Interactive segment has strong momentum, and we are starting to see the results from our investments, which we believe represent the future of our industry, and a significant value opportunity for shareholders:

- **Robust customer acquisition:** Our digital database has grown by over 2 million members since ESPN BET's launch in November 2023
- **Strong revenue growth:** Interactive generated \$162 million of adjusted revenue in Q1 2025, up \$71 million, or 78%, year-over-year<sup>4</sup>
- **Significant enhancements in adjusted EBITDA and flow-through:** Interactive has increased adjusted EBITDA by \$107 million year-over-year, with ~150% year-over-year adjusted EBITDA flow-through on incremental revenue in Q1 2025<sup>5</sup>
- **Near-term profitability in Q4 2025 with significant runway for growth in 2026 and beyond:** As a result of the momentum underway in Interactive in both growth and profitability, we continue to expect the Interactive segment will generate positive adjusted EBITDA in the fourth quarter of 2025 and drive continued profitability in 2026 and beyond

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<sup>3</sup> Based on 2024; EBITDAR adjusted to add back all gaming and admissions taxes.

<sup>4</sup> Interactive Adj. Revenue is revenue excluding tax gross-ups related to gaming taxes which PENN Interactive pays on behalf of, and is reimbursed by, its third-party online sports betting and iCasino operator partners that PENN provides market access to in various states in the U.S.

<sup>5</sup> Calculated as YoY change in Adj. EBITDA divided by YoY change in Adj. Revenue – Q1'25 vs. Q1'24.

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- **Improving product and talent:** We continue to build out our best-in-class technology team to lead our digital product upgrades and offerings, including the addition of Aaron LaBerge as Chief Technology Officer and Billy Turchin as Chief Product Officer. We have been recognized for our meaningful product improvements, most recently with the Hollywood iCasino app being ranked #2 overall in Eilers & Krejciek's U.S. iCasino Product Rankings

The Board and management team continue to aggressively assess the progress in Interactive in line with our strategic priorities, and the Board maintains strategic optionality with regard to its investments in digital.

**We are committed to reducing leverage and accelerating capital return to shareholders**

PENN maintains a disciplined approach to capital allocation, ending the first quarter of 2025 with \$1.5 billion in liquidity and a strengthened balance sheet. While our leverage has increased over the last two years as we made critical investments in our digital business, we have now reached a position in which we are well-equipped to rapidly deleverage our balance sheet as the Interactive segment approaches and achieves profitability. As we continue to strengthen our balance sheet, we also expect to accelerate return of capital to shareholders in the second half of the year and repurchase **at least \$350 million of common stock in calendar 2025**.

**Overview of HG Vora's Blunderbuss Campaign and Reckless Approach to State Gaming Authorities and Applicable Law**

The PENN Board understands the importance of listening to our shareholders. We value their input and are committed to ongoing Board refreshment. In line with this commitment, we routinely solicit feedback and engage with the investment community about our strategy, performance and business priorities. Our engagement with HG Vora dates back well before 2023, however, since that time:

- Members of the PENN Board and management team have held more than 25 meetings or calls with representatives of HG Vora
  - On September 19, 2023, only one week after it was requested, PENN invited HG Vora to present its ideas to the full Board and hosted a 90-minute-long discussion with its representatives about strategy and other matters. Notably, HG Vora expressed enthusiastic support for the ESPN partnership in this meeting
  - PENN entered into an NDA to "wall cross" HG Vora for one quarter to receive HG Vora's input on the Company's earnings materials
  - In January 2025, after HG Vora nominated three candidates for election to the PENN Board, we promptly included those candidates in our active and ongoing director search process. The Board conducted thorough and extensive interviews with each HG Vora candidate, consistent with our standard evaluation procedures
  - Between March 25, 2025, and April 24, 2025, we held eight meetings with HG Vora's representatives to attempt to reach a mutually agreeable resolution
  - On April 24, 2025, we held a call with HG Vora's outside advisor to communicate that PENN would be willing to appoint two of HG Vora's candidates – Johnny Hartnett and Carlos Ruisanchez – to serve as directors of the Board as part of a settlement
-

- In response, on April 25, 2025, HG Vora rejected this proposal as the basis for a resolution. Notably, the only counter-proposals HG Vora made over the course of our engagement were the appointment of all three of its nominees or a settlement involving the appointment of two of its nominees in addition to commitments around governance and strategic changes, despite the fact that state gaming authorities had explicitly directed both the Company and HG Vora that HG Vora was not permitted to seek governance and strategic changes without obtaining all necessary licenses
- Later that day, given our determination that Mr. Hartnett and Mr. Ruisanchez would be additive to PENN's Board, we nominated them to the Company's slate

Over the course of our engagement, HG Vora has consistently (1) made demands of the Company that would have been value-destructive and that were short-sighted, short-term and self-serving in nature, (2) demonstrated flagrant disregard for the views and directives of state gaming authorities, and (3) rejected each of our reasonable offers to reach a mutually agreeable resolution. Given these actions, we believe HG Vora is intent on ensuring all three of its candidates are appointed to the Board, regardless of their suitability and qualifications, and despite only two seats being available for election at this year's Annual Meeting – all at the expense of the Company and its shareholders.

*(1) HG Vora's value-destructive demands for PENN's business*

Despite saying it has “deep experience investing in the gaming sector,” HG Vora's primary strategic direction was to strongly advocate for PENN to execute an approximately 50% leveraged buyback that would increase PENN's debt to unstable levels and limit PENN's ability to pursue growth investments at the time. A key assumption of HG Vora's ill-advised proposal was that the Company should not consider rent as debt and should ignore lease-adjusted leverage metrics, which lenders, the ratings agencies, sell-side analysts and state gaming authorities use to underpin their leverage and risk analyses. In addition, to fund share repurchases, HG Vora urged PENN to cancel or pause retail growth projects at Aurora and Joliet, Illinois, Columbus, Ohio and Henderson, Nevada – which would have limited our ability to invest in these communities, particularly with regard to labor. In a challenging M&A environment and while the business was gaining momentum, HG Vora also demanded PENN publicly announce a strategic review of the whole business and the Interactive segment – despite explicit direction from state gaming authorities that HG Vora was not permitted to seek provisions of this nature. These short-sighted and self-serving proposals would destroy significant shareholder value while potentially helping HG Vora partially or fully exit its PENN position.

*(2) HG Vora has consistently violated state gaming regulations and regulatory directives, in addition to its history of violating federal securities laws*

HG Vora has consistently taken action that has violated state gaming requirements. In December 2023, HG Vora filed a Schedule 13D with the SEC disclosing its intention to nominate director candidates to the Company's Board and push for governance changes, including new Board committees. Without going through the rigors of state gaming licensing, HG Vora's filing:

- Directly **violated its institutional investor waiver granted by state gaming authorities**, which had allowed HG Vora to accumulate an 18.5% position in PENN
  - Led to state gaming authorities informing both PENN and HG Vora that HG Vora's efforts to influence the Company's operations and strategy and nominate directors were **improper and impermissible**
  - Resulted in state gaming authorities instructing PENN to **limit engagement with HG Vora** while its licensure was under review
-

HG Vora has asserted that the Company publicly “lobbied” a state gaming regulator to their detriment. This characterization, which presumably refers to a publicly broadcasted meeting before the Massachusetts Gaming Commission, demonstrates a fundamental lack of understanding of the gaming regulatory framework. The Company and its counsel appeared at this meeting at the invitation of the Commission (as is customary in many gaming jurisdictions where a matter involving one of the Company’s licenses is being considered) and provided accurate responses to questions from the Commission.<sup>6</sup> Ultimately, the Commission made its own determination pursuant to the Massachusetts gaming statute and regulations and determined that HG Vora would not be permitted to move forward with a nomination of directors until it had completed its licensing requirements.

Rather than comply with the mandated licensing requirements, HG Vora filed an updated Schedule 13D disclosing that it had reduced its voting power in PENN to below 5% while maintaining its economic exposure through derivatives – for the stated purpose of **positioning itself below the licensing requirements in Massachusetts in order to submit advance notice of recommended Board nominees**.

Both HG Vora and PENN were directed by state gaming regulatory authorities that HG Vora was not permitted to seek governance or strategic changes unless HG Vora had obtained all necessary licenses. Nevertheless, during settlement negotiations with PENN, HG Vora continued to push for such governance changes despite these explicit warnings from state gaming authorities.

HG Vora’s history of noncompliance with law also extends to the federal securities laws. In 2024, the SEC issued an order finding that HG Vora violated the beneficial ownership provisions of the Securities Exchange Act of 1934, resulting in a \$950,000 civil monetary penalty.<sup>7</sup>

**HG Vora’s brand of reckless disregard for regulators and applicable law puts PENN and all of its shareholders at risk.**

*(3) HG Vora has repeatedly rejected our attempts to reach a constructive resolution*

We have engaged with HG Vora extensively in good faith and in accordance with applicable gaming laws. The Board thoroughly interviewed and evaluated all three of HG Vora’s nominees. In the course of that process, our Board determined that Mr. Hartnett and Mr. Ruisanchez would bring relevant expertise and experience in the gaming industry – across both digital and retail – and would be additive inside the Boardroom. The Board carefully considered Bill Clifford, as part of the aforementioned process; however, the Board determined that Mr. Clifford is unsuited for the PENN Board because, among other reasons:

- Mr. Clifford had previously volunteered for a PENN Board seat in 2020, and this offer was rejected based on an evaluation of his skills and experiences against the needs of the Board
- Following his nomination by HG Vora, PENN was willing to reconsider Mr. Clifford’s director candidacy. As in 2020, Mr. Clifford’s skills and experiences were not determined to be additive or complementary to the Board. In addition, during his interview process, Mr. Clifford failed to demonstrate the base level of open-mindedness required of all directors in order to explore value-generating solutions
- During his time as Chief Financial Officer at PENN, Mr. Clifford advocated against key initiatives including bringing IT and financial processes in line with the 21<sup>st</sup> century, the creation of a customer database and related loyalty program, the development of hotels and other amenities at properties and the adoption of standardized and centralized software, systems and shared services. Notably, the execution of most of these initiatives followed Mr. Clifford’s departure from PENN and were largely spearheaded by then Chief Operating Officer and current CEO and President, Jay Snowden. These initiatives were essential to driving meaningful margin improvement, and are critical to success in today’s competitive market

<sup>6</sup> <https://massgaming.com/news-events/article/mgc-open-meeting-december-16-2024/>

<sup>7</sup> In the Matter of HG Vora Capital Management, LLC, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist-Order; available at <https://www.sec.gov/files/litigation/admin/2024/34-99651.pdf>

- ISS recommended shareholders withhold their votes from Mr. Clifford at Drive Shack Inc. twice citing “material governance failures” during his tenure on the Board
- Mr. Clifford lacks digital gaming and online sports betting experience – areas essential to the future of PENN’s business and the industry – and his general experience is redundant with the significant real estate and financial expertise already represented on our Board

We offered HG Vora several reasonable proposals to reach a mutually agreeable resolution, and as noted above, ultimately determined that Mr. Hartnett and Mr. Ruisanchez would be value-additive to the Board. However, HG Vora quickly rejected every one of our proposals and never offered up a counter-proposal other than the appointment of all three of its nominees or a settlement involving the appointment of two of its nominees in addition to impermissible commitments around governance and strategic changes.

We have engaged with HG Vora extensively over the past several years and have thoroughly considered its feedback. Prior to receiving HG Vora’s nominations, we had already begun a Board refreshment initiative dating back to 2020 with the assistance of a national search firm to identify prospective Board candidates, focusing most recently on identifying a candidate with a digital background. When HG Vora nominated Mr. Hartnett, we interviewed him and determined that his skills and background fit the profile of this search. We also determined that Mr. Ruisanchez’s skills and background would be additive to the Board. We have vetted HG Vora’s third nominee more than once in the past five years, including in 2020 when there was no actual, threatened or purported proxy contest. At that time, we concluded that Mr. Clifford was unsuited to serve on the Board because he did not possess the experience, skills or other characteristics necessary to make a positive contribution to the Board or the Company. Five years later, our conclusion regarding Mr. Clifford remains the same. As a result, we determined that it is in the best interest of the Company, all shareholders and other constituents to nominate Messrs. Hartnett and Ruisanchez for election to the Board while, in the absence of a fitting third candidate, reducing the Board size to eliminate the vacancy created by the retirement of Ron Naples.

**Following their elections at our upcoming Annual Meeting, 75% of PENN’s directors will have joined the Board since 2019. The PENN Board continues to consider opportunities to further refresh the Board, including with input from shareholders.**

**PENN is Committed to Acting in the Best Interest of All Shareholders**

The Board and management team are committed to acting in the best interest of our Company and shareholders. We continue to take action to drive growth, expand margins, improve cash flow generation and accelerate capital return to shareholders.

We recognize there is more work to be done, but our business has strong momentum, and we are confident in the direction we are headed. We look forward to updating you on our progress as we continue to execute on our plan to generate significant value.

Thank you for your continued support of and investment in PENN.

Sincerely,

The Board of Directors of PENN Entertainment

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About PENN Entertainment, Inc.

PENN Entertainment, Inc., together with its subsidiaries (“PENN,” or the “Company”), is North America’s leading provider of integrated entertainment, sports content, and casino gaming experiences. PENN operates in 28 jurisdictions throughout North America, with a broadly diversified portfolio of casinos, racetracks, and online sports betting and iCasino offerings under well-recognized brands including Hollywood Casino®, L’Auberge®, ESPN BET™, and theScore BET Sportsbook and Casino®. PENN’s ability to leverage its partnership with ESPN, the “worldwide leader in sports,” and its ownership of theScore™, the top digital sports media brand in Canada, is central to the Company’s highly differentiated strategy to expand its footprint and efficiently grow its customer ecosystem. PENN’s focus on organic cross-sell opportunities is reinforced by its market-leading retail casinos, sports media assets, and technology, including a proprietary state-of-the-art, fully integrated digital sports and iCasino betting platform, and an in-house iCasino content studio (PENN Game Studios). The Company’s portfolio is further bolstered by its industry-leading PENN Play™ customer loyalty program, offering its over 32 million members a unique set of rewards and experiences.

Non-GAAP Financial Measures

In addition to GAAP financial measures, management uses Adjusted Revenues as a non-GAAP financial measure. This non-GAAP financial measure should not be considered a substitute for, nor superior to, financial results and measures determined or calculated in accordance with GAAP. This non-GAAP financial measure is not calculated in the same manner by all companies and, accordingly, may not be an appropriate measure of comparing performance among different companies. We define Adjusted Revenues as revenues excluding tax gross-ups related to gaming taxes which PENN Interactive pays on behalf of, and is reimbursed by, its third-party online sports betting and iCasino operator partners that PENN provides market access to in various states in the U.S. We believe Adjusted Revenues is useful as a supplemental measure in evaluating the performance of our Interactive segment results of operations. Adjusted Revenues is a measure used by management to evaluate total revenues exclusive of tax gross-ups which are not indicative of ongoing operations that could impact period-to-period comparison. A reconciliation of GAAP revenues to Adjusted Revenues for our Interactive segment is included below.

GAAP to Non-GAAP Reconciliation

(\$ in millions, unaudited)	For the Three Months Ended	
	March 31, 2025	
Interactive segment revenues	\$	290.1
Tax gross-ups <sup>(A)</sup>		(128.2)
Adjusted Interactive segment revenues	\$	161.9

(A) Tax gross-ups refers to the gaming taxes which PENN Interactive pays on behalf of, and is reimbursed by, its third-party online sports betting and iCasino operator partners that PENN provides market access to in various states in the U.S.



**Forward Looking Statements**

This press release contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements can be identified by the use of forward-looking terminology such as “expects,” “believes,” “estimates,” “projects,” “intends,” “plans,” “goal,” “seeks,” “may,” “will,” “should,” or “anticipates” or the negative or other variations of these or similar words, or by discussions of future events, strategies or risks and uncertainties. Specifically, forward-looking statements include, but are not limited to, statements regarding: the Company’s expectations of future results of operations and financial condition, including, but not limited to, projections of revenue, Adjusted EBITDA, Adjusted EBITDAR and other financial measures; the assumptions provided regarding the guidance, including the scale and timing of the Company’s product and technology investments; the Company’s expectations regarding results and customer growth and the impact of competition in retail/mobile/online sportsbooks, iCasino, social gaming, and retail operations; the Company’s development and launch of its Interactive segment’s products in new jurisdictions and enhancements to existing Interactive segment products, including the content for the ESPN BET and theScore BET and the further development of ESPN BET and theScore BET on our proprietary player account management system and risk and trading platforms; the benefits of the Sportsbook Agreement between the Company and ESPN; the Company’s expectations regarding its Sportsbook Agreement with ESPN and the future success of ESPN BET; the Company’s expectations with respect to share repurchases; the Company’s expectations with respect to the integration and synergies related to the Company’s integration of theScore and the continued growth and monetization of the Company’s media business; the Company’s expectations that its portfolio of assets provides a benefit of geographically-diversified cash flows from operations; management’s plans and strategies for future operations, including statements relating to the Company’s plan to expand gaming operations through the implementation and execution of a disciplined capital expenditure program at our existing properties, the pursuit of strategic acquisitions and investments, and the development of new gaming properties, including the development projects and the anticipated benefits; improvements, expansions, or relocations of our existing properties; entrance into new jurisdictions; expansion of gaming in existing jurisdictions; strategic investments and acquisitions; cross-sell opportunities between our retail gaming, online sports betting, and iCasino businesses; our ability to obtain financing for our development projects on attractive terms; the timing, cost and expected impact of planned capital expenditures on the Company’s results of operations; and the actions of regulatory, legislative, executive, or judicial decisions at the federal, state, provincial, or local level with regard to our business and the impact of any such actions.

Such statements are all subject to risks, uncertainties and changes in circumstances that could significantly affect the Company’s future financial results and business. Accordingly, the Company cautions that the forward-looking statements contained herein are qualified by important factors that could cause actual results to differ materially from those reflected by such statements. Such factors include: the effects of economic and market conditions in the markets in which the Company operates or otherwise, including the impact of global supply chain disruptions, price inflation, changes in interest rates, economic downturns, changes in trade policies, and geopolitical and regulatory uncertainty; competition with other entertainment, sports content, and gaming experiences; the timing, cost and expected impact of product and technology investments; risks relating to operations, permits, licenses, financings, approvals and other contingencies in connection with growth in new or existing jurisdictions; our ability to successfully acquire and integrate new properties and operations and achieve expected synergies from acquisitions; the availability of future borrowings under our Amended Credit Facilities or other sources of capital to enable us to service our indebtedness, make anticipated capital expenditures or pay off or refinance our indebtedness prior to maturity; the impact of indemnification obligations under the Barstool SPA; our ability to achieve the anticipated financial returns from the Sportsbook Agreement with ESPN, including due to fees, costs, taxes, or circumstances beyond the Company’s or ESPN’s control; the occurrence of any event, change or other circumstances that could give rise to the right of one or both of the Company and ESPN to terminate the Sportsbook Agreement between the companies; the ability of the Company and ESPN to agree to extend the initial 10-year term of the Sportsbook Agreement on mutually satisfactory terms, if at all, and the costs and obligations of such terms if agreed; the outcome of any legal proceedings that may be instituted against the Company, ESPN or their respective directors, officers or employees; the ability of the Company or ESPN to retain and hire key personnel; the impact of new or changes in current laws, regulations, rules or other industry standards; the impact of activist shareholders; adverse outcomes of litigation involving the Company, including litigation in connection with our 2025 annual meeting of shareholders; our ability to maintain our gaming licenses and concessions and comply with applicable gaming law, changes in current laws, regulations, rules or other industry standards, and additional factors described in the Company’s Annual Report on Form 10-K for the year ended December 31, 2024, subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, each as filed with the U.S. Securities and Exchange Commission. The Company does not intend to update publicly any forward-looking statements except as required by law. Considering these risks, uncertainties and assumptions, the forward-looking events discussed in this press release may not occur.

**Contact**

Mike Nieves  
SVP, Finance & Treasurer  
PENN Entertainment, Inc.  
610-373-2400

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## PENN Entertainment: The Facts

### PENN's Differentiated Omni-Channel Strategy Will Deliver Sustainable Shareholder Value

- 1 The gaming landscape is undergoing a fundamental transformation to digital** – in today's environment, digital connectivity to customers is a critical factor in driving top-of-funnel growth, with younger customers increasingly looking for online experiences
- 2 PENN's omni-channel strategy is at the forefront of this transformation** – with a market leading retail footprint and strategy designed to capture the growth opportunities in the evolving digital environment. We have the right brands, relationships, scale, technology, infrastructure and team to succeed
- 3 We are already seeing results** – our Interactive business is growing rapidly, our loyalty program has grown to 32M+ members (up 10% Y/Y), the average age of our customer is down from 53 in 2019 to 44 in 2024 and our customer conversion from online-to-retail has grown significantly
- 4 Our retail business remains best-in-class** – we have the highest tax-adjusted retail EBITDAR margins in the sector and we are growing market share through our enhanced offerings, retail sportsbooks and omni-channel strategy
- 5 Our Interactive business has strong momentum** – with significant revenue and Adj. EBITDA improvement. We grew our digital database by 2M+ members since the launch of ESPN BET. Our iCasino business continues to grow into a more meaningful contributor and we expect the segment to achieve profitability by the end of 2025
- 6 We maintain strong balance sheet liquidity** and we are on track to rapidly **deleverage as our Interactive business achieves profitability**
- 7 We expect to repurchase at least \$350M of shares** by the end of the year
- 8 While PENN has constructively engaged with HG Vora in good faith, HG Vora made short-term, value-destructive demands for PENN's business, including excessive leveraged share repurchases**
- 9 HG Vora has consistently violated regulatory rules and directives** and demonstrated a blatant disregard for the SEC and state gaming authorities
- 10 PENN has the right leadership and Board** – including the addition of two of HG Vora's nominees – to execute its differentiated omni-channel strategy to drive shareholder value





## PENN Entertainment: The Facts

### The Current Gaming Landscape Is Rapidly Undergoing a Structural Shift to Digital

*"These past few years have reshaped the industry, and the revenue pie, while it's much bigger, looks very different than it used to. That's increasingly driven by new online gaming options available to more people than ever before."*



— February 2025

*"Across the 492 commercial casinos around the country, revenue from traditional casino games grew by one percent in 2024 to a record \$49.89 billion. Legal sports betting launched in North Carolina and Vermont in 2024, helping drive commercial sports betting revenue up 24.8 percent to \$13.78 billion as Americans legally bet a total of \$149.90 billion on sports throughout the year."*

*The iGaming market also continued its strong growth in 2024, with combined iGaming revenue from seven active states (excluding Nevada's online poker only market) reaching \$8.41 billion, a 28.7 percent increase year-over-year."*



— May 2025

- Online gaming is expected to generate 33% of gaming revenue by 2030 vs. just 19% today<sup>(1)</sup>
- OSB and iCasino GGR is projected to grow at a ~17% CAGR from 2024 to 2030, as compared to land-based revenue, which is projected to grow at a ~3% CAGR over the same period<sup>(1)</sup>

### Our Omni-Channel Strategy Is at the Forefront of This Transformation and We Are Positioned to Win

#### Growing Loyalty Program

**32M+**  
Loyalty Program Members  
as of YE '24  
**+10%**  
Y/Y

#### Attracting Online Customers Near Retail Locations

**34%** of Digitally-Acquired Customers Within 50 Miles of a Property

#### Attracting a Younger Customer

**53** ➔ **44**  
2019 2024  
Average Age of Our 12-Month Active Database

#### Retail Operator with Unrivaled Scale

**42** Properties  
Across **19** States  
**5** New Developments Coming Online

#### Growing Interactive Segment

Digital Database Has Grown by **2M+** Members Since the Launch of ESPN BET



#### Growing Retail Market Share

**14 of 17**  
Regional Markets with No New Supply Saw Market Share Growth in Q1'25



## PENN Entertainment: The Facts

### Our Actions Have Yielded Results

**Interactive Segment  
on Path to Profitability  
with Significant  
Upside**

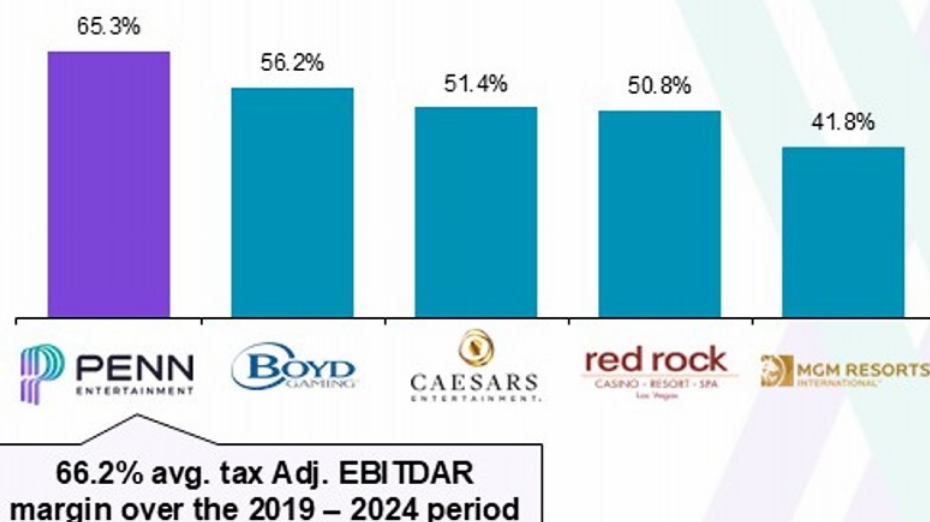
**+\$71M**  
Y/Y Adj. Revenue<sup>(2)</sup>  
Growth in Q1'25

**+\$107M**  
Y/Y Adj. EBITDA  
Improvement in Q1'25

**~150%**  
Q1'25 Y/Y  
Adj. EBITDA  
Flow-Through<sup>(3)</sup>

**Retail Segment  
Maintains Sector-  
Leading Margins**

#### 2024 Tax Adj. Retail EBITDAR Margins<sup>(4)</sup>



### We Enhanced Our Leadership and Board to Execute on Our Digital Strategy

#### Executive



**Aaron LaBerge, CTO**  
*Previously CTO at  
Disney Entertainment  
and ESPN*



**Billy Turchin, CPO**  
*Previously SVP,  
Product at FanDuel*



**Mike Andrews, Head  
of Engineering**  
*Previously SVP,  
Technology at Capital  
One*



**Gadi Rouache,  
Head of Design**  
*Previously VP,  
Technology Strategy  
& Creative at Disney*

#### Board



**Anuj Dhanda,  
Director**  
*Currently EVP &  
CTO at  
Albertsons*



**Johnny  
Hartnett,  
Nominee**  
*Former CEO at  
Superbet Group*





## PENN Entertainment: The Facts

### A Strengthened Balance Sheet and Capital Return to Shareholders

**\$1.5B**

Liquidity as of Q1'25

**\$350M**

Share Repurchase  
Commitment in 2025

### Analysts and Industry Players Recognize PENN's Strong Momentum

*"Overall, PENN Interactive saw +\$71M/+\$107M Y/Y improvements in Adj. Revenues/Adj. EBITDA in Q1, with an OSB promo rate -140bps lower (% of handle). Its interactive user base continues to ramp...Further, PENN had its best iCasino NGR quarter on record, with MAUs up +20% Y/Y to a new high (with DAUs an all-time high last week). PENN's standalone iCasino apps are also at all-time highs (following PA/MI launch in Jan, March launch of NJ and ONT launch in April), with 70% of the app's theo revenue incremental and +134bps higher hold vs. integrated iCasino in ESPN BET & theScore Bet. Notably, PENN continues to see success in omni-channel. In Q1 in PA/MI (two of its three states where live), mgmt has seen +21%/+27% Y/Y increases in retail theo and +165%/+242% increases in online theo."*

TRUIST – May 2025

*"We continue to see PENN as best-in-class regional brick & mortar operators, with well-proven operating prowess likely translating to a more resilient top-line & margin outlook vs. peers amidst continued softness in the low-income consumer & plummeting consumer confidence. We also favor PENN's geographic diversity and predominately drive-to assets in the current macro environment, while comparatively high blended gaming tax rate limits operating leverage should the consumer deteriorate further."*

STIFEL – May 2025

*"ESPN BET and its Hollywood Casino offering are the best combo package in the sports betting/online casino world for the recreational player as it stands today...Very clean [sportsbook] interface, super fast between screens, -110s abound, never encountered the spinning wheel of death."*

Casino Reports – March 2025

*"In 2024, ESPN BET added enhancements to its offerings, added player prop market depth, completed the account linking between ESPN and ESPN BET, and added to the aesthetics of the app ... Accordingly, we believe the product, from an ability to compete perspective, is broadly where it needs to be heading into 2025 to play catch up to peers."*

Deutsche Bank – January 2025





## PENN Entertainment: The Facts

### PENN Engaged Constructively with HG Vora Since 2023

- **Held more than 25 meetings or calls** with HG Vora's representatives since 2023
- Hosted representatives of HG Vora to **present their ideas to the full Board within one week of their request**
- **PENN entered into a nondisclosure agreement to "wall cross" HG Vora** to receive its input on the Company's upcoming quarterly earnings materials
- **Conducted thorough and extensive interviews of all three of HG Vora's director nominees**, consistent with the Board's standard evaluation procedures
- PENN made **multiple settlement offers**
- **Nominated two of HG Vora's nominees to PENN's Board**

### HG Vora Made a Number of Value-Destructive Suggestions for PENN's Business

- **Proposed a ~50% leveraged buyback** that would **increase PENN's debt and limit PENN's ability to pursue growth investments**, including our under development retail projects
- To do so, HG Vora **encouraged PENN not to consider rent as debt and ignore lease-adjusted leverage ratios**, which lenders, ratings agencies, sell-side analysts and state regulators use to analyze the Company's leverage profile and risk
- In a challenging M&A environment and while the business was gaining momentum, HG Vora **also demanded PENN publicly announce a strategic review of the whole business and the Interactive segment**
- **HG Vora's suggestions were short-sighted, self-serving and not in the best interest of driving long-term value**

### HG Vora Demonstrated Consistent Disregard for the Views of Regulators and a Blunderbuss Approach to Engagement

- **HG Vora violated an institutional investor waiver specifically granted to them:** Converted to a 13D filer, in violation of the institutional investor waiver granted by the regulators that had allowed it to accumulate an 18.5% position without going through the rigors of state gaming licensing
- **HG Vora acted inappropriately without all required licenses:** State gaming regulators informed PENN and HG Vora that HG Vora's efforts to influence the Company's operations and strategy were impermissible without all required licenses – **they still do not have all such licenses**
- **Ownership manipulation:** Avoiding gaming licensing requirements in order to nominate directors, HG Vora converted its position into derivatives to limit voting power while maintaining economic exposure
- **Pushed for governance changes despite express prohibitions on doing so** by state gaming regulators
- **HG Vora was fined by the SEC in 2024 for violating 13D disclosure rules<sup>(5)</sup>**





## PENN Entertainment: The Facts

### The Board and its Nominating & Corporate Governance Committee Thoroughly Evaluated All Three of HG Vora's Nominees

- ✓ Committed to ongoing Board refreshment and ensuring the right mix of skills and experience in the Boardroom
- ✓ Had already engaged a national search firm to identify prospective Board candidates prior to receiving HG Vora's nominations
- ✓ Conducted thorough evaluation process of all three HG Vora Nominees, including in-depth interviews with each

### We Determined That Two of HG Vora's Candidates Were Qualified for PENN's Board. . .

<b>Johnny Hartnett</b> <i>(Former CEO, Superbet Group)</i>	<ul style="list-style-type: none"> <li>✓ Open-minded to all ideas to create shareholder value</li> <li>✓ 20+ years of leadership in the entertainment and gaming industries</li> <li>✓ Proven track record driving digital and innovation-led growth</li> <li>✓ Deep experience scaling online sports betting and gaming businesses</li> </ul>
<b>Carlos Ruisanchez</b> <i>(Founding Partner, Sorelle Capital; Former CFO, Pinnacle Entertainment)</i>	<ul style="list-style-type: none"> <li>✓ Open-minded to all ideas to create shareholder value</li> <li>✓ Seasoned finance executive with expertise in capital allocation and growth strategy</li> <li>✓ Deep industry knowledge across casino operations and development</li> <li>✓ Led transformative initiatives and M&amp;A execution at Pinnacle Entertainment</li> </ul>

### . . . But Their Third Nominee is Unsuitable

<b>William Clifford</b> <i>(Former CFO, Gaming &amp; Leisure Properties; Former CFO, PENN Entertainment)</i>	<ul style="list-style-type: none"> <li>✗ Requested to be added to our Board in 2020 and was rejected based on an evaluation of his skills and experiences against the needs of the Board</li> <li>✗ Failed to demonstrate the base level of open-mindedness towards others' ideas in the interview process, raising concerns about his willingness to consider all paths to enhance shareholder value</li> <li>✗ During his time at PENN, he advocated against key initiatives that were critical to success and achieving margin improvement, such as modernizing IT, standardizing and centralizing financial processes, adoption of shared services, the creation of a customer database and loyalty program, and the development of hotels and other amenities at properties</li> <li>✗ ISS recommended shareholders withhold their votes from him at Drive Shack <u>twice</u>, citing "material governance failures"</li> <li>✗ Lacks digital gaming and online sports betting experience – areas essential to the future of PENN's business and the industry</li> <li>✗ Experience is redundant with the significant real estate and financial expertise already represented on our Board</li> </ul>
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## PENN Entertainment: The Facts

### PENN Repeatedly Sought a Constructive Resolution With HG Vora

#### PENN's Constructive Approach

- ✓ Offered HG Vora several reasonable proposals to reach a **mutually agreeable and reasonable resolution to avoid a costly and distracting proxy fight**, including multiple offers to add its nominees
- ✓ **Constructively engaged with HG Vora in accordance with applicable gaming laws**
- ✓ **Decided to nominate the two HG Vora nominees who we concluded were qualified to join PENN's Board** in place of two existing directors who will not be standing for reelection

#### HG Vora's Destructive Approach

- ✗ **Consistently rejected offers to reach a mutually beneficial resolution**, and instead is more interested in trying to conduct a costly and distracting purported proxy fight
- ✗ Demanded three of its nominees be added to the Board or two of its nominees plus other governance and strategic changes in **violation of applicable gaming laws and regulations**
- ✗ **Launched a lawsuit in an attempt** to add its third, less qualified, nominee to PENN's Board – **and has still not obtained all required gaming licensing**

### PENN Has the Right Board to Oversee Its Strategy

#### PENN has significantly refreshed its Board in recent years

- Following the additions of Hartnett and Ruisanchez to PENN's Board, **75% of PENN directors will have been appointed since 2019**
- Two directors will not be standing for reelection and one director retired ahead of the Annual Meeting
- The Board is **committed to ongoing refreshment** and is always willing to consider adding directors **who will create shareholder value**
- Ongoing engagement with an independent director search firm, and will consider any recommendations from our shareholders as we continue our Board refreshment process

#### PENN directors bring deep expertise across gaming, media, technology, M&A and capital markets

6 of 8	C-Suite Executive Experience
7 of 8	Financial Experience
6 of 8	Industry Experience
7 of 8	M&A / Strategic Planning Experience
7 of 8	Technology / Digital Experience





## Appendix

### Footnotes

- (1) Source: H2 Gambling Capital; assumes land-based revenue includes U.S. land-based casino revenue as tracked by H2 Gambling Capital
- (2) Interactive Adj. Revenue is revenue excluding tax gross-ups related to gaming taxes which PENN Interactive pays on behalf of, and is reimbursed by, its third-party online sports betting and iCasino operator partners that PENN provides market access to in various states in the U.S.
- (3) Calculated as YoY change in Adj. EBITDA divided by YoY change in Adj. Revenue – Q1'25 vs. Q1'24
- (4) Gaming taxes are added back in tax-adjusted retail EBITDAR; peer tax-adjusted margins from Wall Street research
- (5) Source: SEC - <https://www.sec.gov/newsroom/press-releases/2024-30>

### Non-GAAP Financial Measures

In addition to GAAP financial measures, management uses Adjusted Revenues as a non-GAAP financial measure. This non-GAAP financial measure should not be considered a substitute for, nor superior to, financial results and measures determined or calculated in accordance with GAAP. This non-GAAP financial measure is not calculated in the same manner by all companies and, accordingly, may not be an appropriate measure of comparing performance among different companies. We define Adjusted Revenues as revenues excluding tax gross-ups related to gaming taxes which PENN Interactive pays on behalf of, and is reimbursed by, its third-party online sports betting and iCasino operator partners that PENN provides market access to in various states in the U.S. We believe Adjusted Revenues is useful as a supplemental measure in evaluating the performance of our Interactive segment results of operations. Adjusted Revenues is a measure used by management to evaluate total revenues exclusive of tax gross-ups which are not indicative of ongoing operations that could impact period-to-period comparison. A reconciliation of GAAP revenues to Adjusted Revenues for our Interactive segment is included below.

### GAAP to Non-GAAP Reconciliation

(\$ in millions, unaudited)	For the Three Months Ended	
	March 31, 2024	March 31, 2025
Interactive segment revenues	\$207.7	\$290.1
Tax gross-ups <sup>(A)</sup>	(116.6)	(128.2)
<b>Adjusted Interactive segment revenues</b>	<b>\$91.1</b>	<b>\$161.9</b>

- (A) Tax gross-ups refers to the gaming taxes which PENN Interactive pays on behalf of, and is reimbursed by, its third-party online sports betting and iCasino operator partners that PENN provides market access to in various states in the U.S.





## Appendix

### Forward Looking Statements

This document contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements can be identified by the use of forward-looking terminology such as "expects," "believes," "estimates," "projects," "intends," "plans," "goal," "seeks," "may," "will," "should," or "anticipates" or the negative or other variations of these or similar words, or by discussions of future events, strategies or risks and uncertainties. Specifically, forward-looking statements include, but are not limited to, statements regarding: the Company's expectations of future results of operations and financial condition, including, but not limited to, projections of revenue, Adjusted EBITDA, Adjusted EBITDAR and other financial measures; the assumptions provided regarding the guidance, including the scale and timing of the Company's product and technology investments; the Company's expectations regarding results and customer growth and the impact of competition in retail/mobile/online sportsbooks, iCasino, social gaming, and retail operations; the Company's development and launch of its Interactive segment's products in new jurisdictions and enhancements to existing Interactive segment products, including the content for the ESPN BET and theScore BET and the further development of ESPN BET and theScore BET on our proprietary player account management system and risk and trading platforms; the benefits of the Sportsbook Agreement between the Company and ESPN; the Company's expectations regarding its Sportsbook Agreement with ESPN and the future success of ESPN BET; the Company's expectations with respect to share repurchases; the Company's expectations with respect to the integration and synergies related to the Company's integration of theScore and the continued growth and monetization of the Company's media business; the Company's expectations that its portfolio of assets provides a benefit of geographically-diversified cash flows from operations; management's plans and strategies for future operations, including statements relating to the Company's plan to expand gaming operations through the implementation and execution of a disciplined capital expenditure program at our existing properties, the pursuit of strategic acquisitions and investments, and the development of new gaming properties, including the development projects and the anticipated benefits; improvements, expansions, or relocations of our existing properties; entrance into new jurisdictions; expansion of gaming in existing jurisdictions; strategic investments and acquisitions; cross-sell opportunities between our retail gaming, online sports betting, and iCasino businesses; our ability to obtain financing for our development projects on attractive terms; the timing, cost and expected impact of planned capital expenditures on the Company's results of operations; and the actions of regulatory, legislative, executive, or judicial decisions at the federal, state, provincial, or local level with regard to our business and the impact of any such actions.

Such statements are all subject to risks, uncertainties and changes in circumstances that could significantly affect the Company's future financial results and business. Accordingly, the Company cautions that the forward-looking statements contained herein are qualified by important factors that could cause actual results to differ materially from those reflected by such statements. Such factors include: the effects of economic and market conditions in the markets in which the Company operates or otherwise, including the impact of global supply chain disruptions, price inflation, changes in interest rates, economic downturns, changes in trade policies, and geopolitical and regulatory uncertainty; competition with other entertainment, sports content, and gaming experiences; the timing, cost and expected impact of product and technology investments; risks relating to operations, permits, licenses, financings, approvals and other contingencies in connection with growth in new or existing jurisdictions; our ability to successfully acquire and integrate new properties and operations and achieve expected synergies from acquisitions; the availability of future borrowings under our Amended Credit Facilities or other sources of capital to enable us to service our indebtedness, make anticipated capital expenditures or pay off or refinance our indebtedness prior to maturity; the impact of indemnification obligations under the Barstool SPA; our ability to achieve the anticipated financial returns from the Sportsbook Agreement with ESPN, including due to fees, costs, taxes, or circumstances beyond the Company's or ESPN's control; the occurrence of any event, change or other circumstances that could give rise to the right of one or both of the Company and ESPN to terminate the Sportsbook Agreement between the companies; the ability of the Company and ESPN to agree to extend the initial 10-year term of the Sportsbook Agreement on mutually satisfactory terms, if at all, and the costs and obligations of such terms if agreed; the outcome of any legal proceedings that may be instituted against the Company, ESPN or their respective directors, officers or employees; the ability of the Company or ESPN to retain and hire key personnel; the impact of new or changes in current laws, regulations, rules or other industry standards; the impact of activist shareholders; adverse outcomes of litigation involving the Company, including litigation in connection with our 2025 annual meeting of shareholders; our ability to maintain our gaming licenses and concessions and comply with applicable gaming law, changes in current laws, regulations, rules or other industry standards, and additional factors described in the Company's Annual Report on Form 10-K for the year ended December 31, 2024, subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, each as filed with the U.S. Securities and Exchange Commission. The Company does not intend to update publicly any forward-looking statements except as required by law. Considering these risks, uncertainties and assumptions, the forward-looking events discussed in this document may not occur.

# EXHIBIT C

**UNANIMOUS WRITTEN CONSENT  
OF THE  
BOARD OF DIRECTORS OF  
PENN ENTERTAINMENT, INC.  
A Pennsylvania corporation**

**May 8, 2025**

The undersigned, being all the members of the Board of Directors (the “Board”) of PENN Entertainment, Inc., a Pennsylvania corporation (the “Company”), in accordance with Sections 1727(b) of the Pennsylvania Business Corporation Law of 1988, as amended, and in lieu of a meeting of the Board, hereby unanimously consent to and adopt the resolutions attached hereto as Exhibit A with full force and effect as if they had been duly adopted at a duly convened meeting of the Board.

*David Handler*

\_\_\_\_\_  
David A. Handler

*Barbara Shattuck Kohn*

\_\_\_\_\_  
Barbara Shattuck Kohn

*Anuj Dhanda*

\_\_\_\_\_  
Anuj Dhanda

*Saul Reibstein*

\_\_\_\_\_  
Saul V. Reibstein

*Marla Kaplowitz*

\_\_\_\_\_  
Marla Kaplowitz

*Jane Scaccetti*

\_\_\_\_\_  
Jane Scaccetti

*Jay Snowden*

\_\_\_\_\_  
Jay A. Snowden

*Vimla Black-Gupta*

\_\_\_\_\_  
Vimla Black-Gupta

## Exhibit A

### Resolutions re Special Litigation Committee of the Board - Formation of Special Litigation Committee

WHEREAS, on May 7, 2025, HG Vora Capital Management, LLC, HG Vora Special Opportunities Master Fund, LTD., and Downriver Series LP-Segregated Portfolio C (collectively, “HG Vora”), on behalf of themselves and derivatively on behalf of Penn Entertainment, Inc. (“PENN” or “Company”) initiated a lawsuit in the United States District Court for the Eastern District of Pennsylvania captioned *HG Vora Capital Management, LLC, et al. v. PENN Entertainment, Inc., et al.*, No. 5:25-cv-2313 (the “Litigation”) and claiming, among other things, that members of PENN’s Board of Directors (the “Board”) breached their fiduciary duties (the “Claims”) to PENN by authorizing the reduction in the size of the Board from nine members to eight members and agreeing to nominate Johnny Harnett and Carlos Ruisanchez as candidates for the two open board seats at the 2025 annual meeting; and

WHEREAS, HG Vora has not yet made a demand on the Company to initiate a lawsuit against the Board for the Claims, but the Company has the right under 15 Pa. C.S. § 1783 to form a special litigation committee of the Board to investigate the Claims; and

WHEREAS, after consideration of relevant facts and circumstances, the Board deems it advisable and in the best interest of the Company to constitute a special litigation committee of individuals who have no interest in the asserted claims and are capable of independent judgment in the matter (the “Committee”) to examine, review, and analyze the facts and circumstances surrounding the Claims in the Litigation, any related actions that may be filed and any other claims or demands otherwise asserted (“Related Claims or Demands”), and to determine on behalf of the Company what actions, if any, the Board should take in response thereto.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to 15 Pa. C.S. § 1783, the Board has determined to constitute a Committee, which shall consist of two (2) disinterested individuals, to examine, review, and analyze the facts and circumstances surrounding the Claims and the Litigation, any Related Claims or Demands;

FURTHER RESOLVED, that the Committee is hereby authorized, and shall have the responsibility, to: (1) review and investigate all of the Claims and any Related Claims or Demands; (2) determine what action, if any, the Board should take in response to the Claims, the Litigation, or any Related Claims or Demands, which actions may include, but not be limited to, commencing litigation to pursue any meritorious claims or declining to commence litigation or seeking to dismiss the Litigation or any other litigation brought on behalf of the Company that may be pending prior to the conclusion of its investigation; and (3) take any and all other actions as may be necessary or appropriate in its judgment to carry out the duties of the Committee contemplated by these resolutions and by 15 Pa. C.S. § 1783;

FURTHER RESOLVED, that such Committee is hereby authorized and empowered to engage such experts and advisers, including independent legal counsel, as the Committee shall deem necessary or desirable in order to assist it in the discharge of its responsibilities;



FURTHER RESOLVED, that the Committee is hereby authorized and empowered to enter into such contracts providing for the retention, compensation, reimbursement of expenses and indemnification of such experts and advisors, including independent legal counsel, as the Committee shall deem necessary or desirable;

FURTHER RESOLVED, that all costs and expenses incurred by the Committee, including costs and expenses of counsel and other advisors retained by the Committee, shall be borne by the Company;

FURTHER RESOLVED, that the officers, agents, and employees of the Company, and each of them are hereby authorized and directed to assist the Committee and to provide it with all information and documents that the Committee deems appropriate and shall request with respect to the subject matter of the Claims, the Litigation, or any Related Claims or Demands, including without limitation participating in interviews by the Committee; and

FURTHER RESOLVED, that the Committee be and hereby is authorized and empowered to take such actions and execute and deliver such further agreements, instruments, and filings (including filings with appropriate courts of competent jurisdiction) as may be necessary and appropriate to carry out the purposes of the foregoing resolutions.

Appointment to Committee

WHEREAS, the Board deems it advisable and in the best interest of the Company that the Committee shall consist of two individuals meeting the qualification requirements set forth in 15 Pa. C.S. §1783(b) and appoints each of David Handler, Barbara Shattuck Kohn, and Jane Scaccetti to identify, interview and present to the Board their recommendation for appointment to the special litigation committee candidates that have no interest in the asserted claims and are capable of independent judgment in the matter.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby appoints David Handler, Barbara Shattuck Kohn, and Jane Scaccetti to identify, interview, and present to the Board their recommendation for appointment to the special litigation committee candidates that have no interest in the asserted claims and are capable of independent judgment in the matter.

# **EXHIBIT D**

**UNANIMOUS WRITTEN CONSENT  
OF THE  
BOARD OF DIRECTORS OF  
PENN ENTERTAINMENT, INC.  
A Pennsylvania corporation**

**May 14, 2025**

The undersigned, being all the members of the Board of Directors (the “Board”) of PENN Entertainment, Inc., a Pennsylvania corporation (the “Company”), in accordance with Sections 1727(b) of the Pennsylvania Business Corporation Law of 1988, as amended, and in lieu of a meeting of the Board, hereby unanimously consent to and adopt the resolutions attached hereto as Exhibit A with full force and effect as if they had been duly adopted at a duly convened meeting of the Board.



David A. Handler



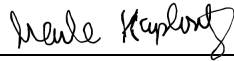
Barbara Shattuck Kohn



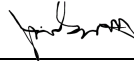
Anuj Dhanda



Saul V. Reibstein



Marla Kaplowitz



Jane Scaccetti



Jay A. Snowden



Vimla Black-Gupta



## Exhibit A

### Resolutions re Appointment of Marc Sonnenfeld and Richard Bazelon to Special Litigation Committee of Board of Directors

WHEREAS, on May 8, 2025, the Board of PENN Entertainment (“PENN” or “Company”) passed a resolution (“SLC Formation Resolution”) authorizing the formation of a special litigation committee under 15 Pa. C.S. § 1783 (the “Committee”) to examine, review, and analyze the facts and circumstances surrounding the breach of fiduciary duty claims asserted by HG Vora Capital Management, LLC, HG Vora Special Opportunities Master Fund, LTD., and Downriver Series LP-Segregated Portfolio C (collectively, “HG Vora”) derivatively on behalf of PENN Entertainment, Inc. (“PENN” or “Company”) in a lawsuit filed in the United States District Court for the Eastern District of Pennsylvania captioned *HG Vora Capital Management, LLC, et al. v. Penn Entertainment, Inc., et al.*, No. 5:25-cv-2313 (the “Litigation”), and any related actions that may be filed and any other claims or demands otherwise asserted (“Related Claims or Demands”), and to determine on behalf of the Company what actions, if any, the Board should take in response thereto; and

WHEREAS, the SLC Formation Resolution further authorized David Handler, Jane Scaccetti, and Barbara Shattuck Kohn (the “SLC Formation Committee”) to identify, interview and present to the Board their recommendation for appointment to the special litigation committee candidates that have no interest in the asserted claims and are capable of independent judgment in the matter; and

WHEREAS, after identifying five viable candidates and interviewing three, the SLC Formation Committee recommends that the Board appoint Marc Sonnenfeld, Esq. and Richard Bazelon, Esq. to the Committee. The SLC Formation Committee has determined that Messrs. Sonnenfeld and Bazelon have no interest in the asserted claims and are capable of independent judgment in the matter.

NOW, THEREFORE, BE IT RESOLVED, that the Board appoints Marc Sonnenfeld, Esq. and Richard Bazelon, Esq. to the Committee authorized by the SLC Formation Resolution; and

FURTHER RESOLVED, that the Committee consisting of Messrs. Sonnenfeld and Bazelon shall have all the responsibility, authority, and power set forth in the SLC Formation Resolution and in 15 Pa. C.S. § 1783.

# **EXHIBIT E**

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**SCHEDULE 14A**

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement
- ☐ **Confidential, For Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))
- ☐ Definitive Proxy Statement
- ☒ Definitive Additional Materials
- ☐ Soliciting Material Under Rule 14a-12

**PENN ENTERTAINMENT, INC.**  
(Name of Registrant as Specified In Its Charter)

---

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.
- ☐ Fee paid previously with preliminary materials.
- ☐ Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11.
- 
-

**SUPPLEMENT TO THE PROXY STATEMENT  
FOR THE ANNUAL MEETING OF SHAREHOLDERS  
OF PENN ENTERTAINMENT, INC.  
TO BE HELD ON JUNE 17, 2025**

On April 28, 2025, PENN Entertainment, Inc. (“PENN”) filed a definitive proxy statement (the “Proxy Statement”) with the Securities and Exchange Commission for the Company’s Annual Meeting of Shareholders to be held on June 17, 2025 (the “Annual Meeting”). The Company is filing this supplement (the “Supplement”) to the Proxy Statement to disclose the following:

1. The two candidates whom the Company’s Board of Directors has nominated for election at the Annual Meeting, Messrs. Johnny Hartnett and Carlos Ruisanchez, were originally recommended for nomination by HG Vora Special Opportunities Master Fund, Ltd.
2. The section of the Proxy Statement entitled “Proposal 4: Approval of the Second Amendment to our 2022 Long-Term Incentive Compensation Plan” contains a sub-section entitled “Share Usage Rate and Dilution” on page 82. In such sub-section, PENN’s average share usage rate, sometimes referred to as unadjusted burn rate, over the three years ended December 31, 2024 (calculated as equity-based awards granted under PENN’s equity compensation plan for the relevant year, divided by average basic common shares outstanding for that year) is incorrectly stated as approximately 3.28%. The correct average share usage rate of PENN is approximately 1.98%.

This Supplement does not change the proposals to be acted upon at the Annual Meeting, which are described in the Proxy Statement. Further, this Supplement should be read with the Proxy Statement and, from and after the date of this Supplement, any references to the “Proxy Statement” shall be deemed to include the Proxy Statement as amended by this Supplement.

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