SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SL GREEN REALTY CORP., and AQUEDUCT DEVELOPMENT PARTNERS LLC	Index No. 601181/09
Plaintiffs,	Date Purchased: April 17, 2009
- against -	**SUMMONS**
DELAWARE NORTH COMPANIES GAMING AND ENTERTAINMENT, INC.,	Plaintiff designates New York County as the place of trial
Defendant.	The basis of venue is Plaintiffs' Principal Place of Business and by Agreement of the Parties
	Plaintiffs' address is: 420 Lexington Avenue New York, NY 10170

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 17, 2009

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

By: _____

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Attorneys for Plaintiffs
SL GREEN REALTY CORP. and
AQUEDUCT DEVELOPMENT PARTNERS LLC

TO: DELAWARE NORTH COMPANIES GAMING
AND ENTERTAINMENT, INC.
c/o CT CORPORATION SYSTEM
111 EIGHTH AVE
NEW YORK, NEW YORK 10011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SL GREEN REALTY CORP. and AQUEDUCT DEVELOPMENT PARTNERS LLC,

Plaintiffs,

-against-

DELAWARE NORTH COMPANIES GAMING AND ENTERTAINMENT, INC.,

Defendant.

Index No.: 601181/09

COMPLAINT

Plaintiffs SL Green Realty Corp. and Aqueduct Development Partners LLC (together, "SL Green"), for their complaint against defendant Delaware North Companies Gaming and Entertainment, Inc. ("DNC"), allege:

PRELIMINARY STATEMENT

1. This action arises from DNC's breach of contract, breach of fiduciary duty and other unlawful conduct in misappropriating for its own benefit the rights to operate wagering and other facilities at New York's premier thoroughbred racing facilities at Belmont Park, Saratoga and Aqueduct racetracks (collectively, the "Racetracks"), and in derailing bids by SL Green, a publicly-held real estate investment trust, and SL Green's assignor and former affiliate, Empire Racing Associates, LLC ("Empire") to obtain those rights. SL Green seeks to recover its own damages, as well as the damages inflicted on Empire (which has unconditionally assigned its claims against DNC to SL Green and in which SL Green held a majority interest), caused by DNC's unlawful scheme.

2. In June 2006, New York State issued a request for bids for the operations of the New York Racetracks, which are owned by the State. The bidding process constituted a unique opportunity for companies in the racing, gaming and real estate industries to operate what are among thoroughbred racing's most prominent racetracks. SL Green and Empire were deprived of that opportunity, however, when, after submitting joint competitive bids with DNC, DNC turned on its partners and, in flagrant breach of its contractual obligations and fiduciary duties, misappropriated that opportunity for itself.

3. During the spring of 2006, Empire and SL Green (both as a member of Empire and, later, as a successor-in-interest to certain of Empire's rights) began intensive efforts, involving months of work and millions of dollars, to develop and submit their bids to obtain the rights to operate the Racetracks' thoroughbred racing, pari-mutuel wagering, video lottery terminals ("VLTs"), and food, beverage and hospitality facilities (collectively, the "Racetrack Rights"). As a critical part of these efforts, Empire assembled a consortium of racing, gaming and real estate companies with extensive experience in their respective fields.

4. DNC was an integral member of Empire, and its participation in the bidding process for the Racetrack Rights was vital to Empire's success, as DNC had experience as a VLT operator in New York State. Accordingly, as a member of Empire, DNC focused on Empire's bid for the rights to operate VLTs at Aqueduct and Belmont Park (the "VLT Rights"). The VLT portion of Empire's bid was by far the most lucrative component of the Racetrack Rights to be awarded by New York State, which would generate hundreds of millions of dollars annually.

5. In the summer of 2006, DNC entered into a series of agreements with Empire that committed DNC to "work together" with Empire in pursuit of a winning bid. Among other provisions, DNC agreed to non-competition, confidentiality, and exclusivity restrictions, as well

as a termination provision that could only be exercised by DNC under limited circumstances and upon 30-days written notice. DNC participated in the bidding process with Empire through the summer of 2007, and assisted in the preparation and submission of Empire's detailed bid proposals.

6. However, in October 2007, DNC actively dissuaded Empire from taking the steps necessary to prepare a bid for the VLT Rights. The true purpose of DNC's interference with the preparation of a bid by Empire soon became clear when, contrary to its contractual and other duties, DNC abruptly attempted to withdraw as a member of Empire so that it could immediately launch -- in direct competition with Empire -- its own bid for the VLT Rights at Aqueduct.

7. Following its unilateral abandonment of Empire, DNC continued its improper dealings in subsequent negotiations with its fellow Empire member, SL Green. In February 2008, DNC entered into discussions with SL Green (the successor-in-interest to Empire with respect to bidding on the VLT Rights) to jointly prepare a VLT bid. As part of those discussions, SL Green gave DNC access to confidential and proprietary business information that SL Green had developed -- with the cooperation of Empire -- in anticipation of submitting its own VLT bid. After accessing SL Green's confidential bidding plans, however, DNC told SL Green it was not interested in preparing a joint bid on reasonable terms.

8. DNC was contractually barred from competing with Empire for any of the Racetrack Rights or using any of Empire's confidential information or material in support of its bid. Similarly, in its negotiations with SL Green, DNC was provided with SL Green's confidential and proprietary information and material based on its agreement that it would not use that information and material for any purpose other than a potential joint bid with SL Green. Nevertheless, since at least October 2007, DNC has improperly competed with both Empire and

SL Green for the VLT Rights, all while in possession of detailed proprietary and confidential information that DNC was barred from using for any purpose other than a joint bid.

9. Having sabotaged the efforts of SL Green and Empire, DNC pursued the VLT Rights for itself alone and, in October 2008, was awarded the VLT Rights at Aqueduct. By wrongfully competing with Empire and SL Green for the right to operate VLTs at Aqueduct, DNC deprived Empire and SL Green of that opportunity. The damaging effect of DNC's wrongful actions is highlighted by the fact that after having misappropriated Empire and SL Green's opportunity, DNC squandered it. DNC recently asked the State to allow it to "restructure" the terms of its acquisition of the VLT Rights at Aqueduct because DNC could not obtain the financing it had promised -- a request that the State appropriately rejected.

10. As a result of DNC's egregious misconduct, SL Green and Empire have lost not only millions of dollars in out-of-pocket expenses, but also their share of the profits from the opportunities that DNC wrongfully misappropriated for itself.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to CPLR §§ 301, 302(a) and 327(b). Venue in this county is appropriate pursuant to CPLR § 503 because DNC has consented in its agreements with Empire to jurisdiction of the New York State Supreme Court, New York County and because plaintiffs' principal place of business is in this County.

FACTS

A. The Parties

12. Plaintiff SL Green Realty Corp. is a corporation organized under the laws of Maryland, with its principal place of business in New York, New York. Plaintiff Aqueduct Development Partners LLC is a Delaware limited liability company and is a wholly-owned subsidiary of SL Green Realty Corp. Aqueduct Development Partners LLC is the assignee of

Empire's claims against DNC. As majority shareholder of Empire and assignee of Empire's claims, plaintiffs bring this action to seek redress for the harm SL Green suffered directly from DNC's wrongful actions, as well as the injuries Empire suffered as a result of those actions.

13. Empire was formed as a limited liability company, organized under the laws of New York, with its principal place of business in Saratoga Springs, New York. On or about April 17, 2009, Empire ceased operations and is entering dissolution. At the time of the commencement of its dissolution, SL Green owned 57% of Empire shares. Prior to entering dissolution, Empire duly assigned all of its right and interest in its claims against DNC, including all claims asserted herein, to its majority shareholder, SL Green.

14. DNC is a corporation organized under the laws of Delaware, with its principal place of business in Buffalo, New York.

B. Empire's Formation

15. In 1955, New York State awarded the New York Racing Association ("NYRA") an exclusive franchise to operate New York's famed thoroughbred racing facilities at the Racetracks. In anticipation of the expiration of NYRA's franchise in December 2007, then-Governor Pataki and New York State established the Ad Hoc Committee on the Future of Racing ("the Ad Hoc Committee") to undertake an open, competitive bidding process to begin the process of selecting a successor to NYRA in December 2005 and to award the Racetrack Rights. The Ad Hoc Committee's selection among the bidders was to be a non-binding recommendation to the Governor and the legislature.

16. Because of uncertainty concerning the structure of the Racetrack Rights ultimately awarded, the Ad Hoc Committee required that bids address several alternative scenarios, each reflecting different regulatory and licensing environments and the awarding of

component pieces of the Racetrack Rights. The VLT component of the Racetrack Rights was a particularly significant piece of the bid, as it was expected to be the most lucrative, with revenues surpassing those derived from pari-mutuel wagering on horse races themselves.

17. In response to this unique opportunity, Empire was formed in March 2006 by a group of companies in the racing, gaming and real estate industries to jointly bid on the Racetrack Rights. In return for contributing professional and industry expertise and financial resources, each member of Empire was assured, through the terms of the applicable agreements described below, that so long as the bidding process was open with respect to any particular component of the Racetrack Rights, no member could compete against Empire or each other, or divulge or use confidential information of Empire or any of its members developed in connection with the Racetrack Rights bidding process.

18. Empire's members included SL Green, a leading real estate investment trust, and DNC, which is an experienced racing and gaming operator, including the operation of VLTs. Upon becoming members of Empire, SL Green initially invested $500,000, and DNC invested $250,000. Each held one seat on Empire's Executive Committee and had representatives on Empire's Board of Managers.

C. DNC's Contractual Obligations to Empire and SL Green

19. The agreements under which DNC was contractually bound to Empire included Empire's Operating Agreement, dated March 22, 2006 (the "Operating Agreement"), Subscription Agreement, dated June 30, 2006 (the "Subscription Agreement"), and two separate Memoranda of Understanding, dated respectively, July 7, 2006 (the "July DNC MOU") and August 15, 2006 (the agreements entered into by DNC are referred to collectively as the "DNC Contracts").

20. In becoming a member of Empire, DNC agreed "to be bound by all of the terms and provisions of [the Operating Agreement]" and "to perform any obligations imposed on a Member under the Operating Agreement." (Subscription Agreement ¶ 11.)

21. Pursuant to the terms of the Operating Agreement, DNC, as a member of Empire, was obligated to "keep in strict confidence all information generated, compiled or synthesized" by Empire, or its members for the benefit of Empire, including all financial information and all information relating to the Racetracks and any "regulatory or statutory matters related thereto" (e.g., the bidding process for any of the Racetrack Rights). (Operating Agreement ¶ 12.8.) DNC, as a member of Empire, was likewise obligated not to use "any information obtained through [its] association with [Empire] in a way that competes with or assists a competitor of [Empire] or is otherwise detrimental to [Empire]." (Operating Agreement ¶ 12.9.)

22. The Operating Agreement also provided that DNC was bound not only by the contractual obligations spelled out in the agreement, but by New York law concerning members of limited liability companies, including fiduciary obligations.

23. Pursuant to the Operating Agreement, Empire could be dissolved and its affairs wound up only if Empire reached a point where it "will not or cannot obtain" the Racetrack Rights, or "any meaningful interest" therein (e.g., the VLT Rights). The determination of Empire's ability to secure any portion of the Racetrack Rights was left solely to the Empire Board. Individual Empire members were not free to make that determination on their own.

24. The July DNC MOU further spelled out DNC's contractual obligations, including extending DNC's non-disclosure and confidentiality requirements for three years after an effective termination of DNC's relationship with Empire. (July DNC MOU ¶ 12(g).)

25. In addition, the July DNC MOU further specified that for so long as Empire was actively pursuing the Racetrack Rights, DNC would not "directly or indirectly, acting alone or in conjunction with others" either "[c]onsult or engage in any capacity with any other company" in competition with Empire or "[a]ct or conduct itself in any manner . . . contrary to the best interests of Empire...." (July DNC MOU ¶ 9).

26. In addition, DNC recognized the significant damage that would result from a breach of the provisions of the MOU concerning confidentiality or non-competition, acknowledging that in such an event, "immediate and irreparable damage will result." (July DNC MOU ¶ 11.)

27. DNC also agreed to limited termination rights, under which it was permitted to terminate its MOU only if (i) the Racetrack Rights were awarded to a person or entity other than Empire; or (ii) Empire determined that it will not or cannot obtain the Racetrack Rights "or a meaningful interest therein" and commenced discontinuation of its operations. Under either scenario, DNC was obligated to give 30-days written notice before terminating its MOU. (July DNC MOU ¶ 12.)

D. <u>The Bidding Process</u>

28. In conjunction with DNC, Empire worked intensively during the summer of 2006, expending approximately $2.4 million, to develop a bid proposal for, among other things, the VLT Rights, for submission to the Ad Hoc Committee. Over the course of Empire's work, through 2008, to develop its bid for the Racetrack Rights, it spent approximately $4.8 million.

29. On or about August 29, 2006, Empire and three other entities, including Capital Play Pty Limited ("Capital Play"), Excelsior Racing Associates, LLC ("Excelsior"), and NYRA, submitted their respective proposals to the Ad Hoc Committee. Over the next several months,

Capital Play was disqualified from bidding and NYRA filed for bankruptcy. On November 21, 2006, the Ad Hoc Committee made its non-binding recommendation, ranking Excelsior's bid first and Empire's a close second.

30. The Ad Hoc Committee's recommendation was not acted upon, however -- and the bidding process was revised -- when newly-elected Governor Eliot Spitzer in January 2007 announced that he would not necessarily follow the Ad Hoc Committee's recommendation. Instead, a revised bidding process was initiated, under which a new panel was appointed. On March 1, 2007, Empire notified the Governor's office that it would participate in the new process and make a proposal to the newly-appointed panel. On March 31, 2007, Empire submitted that proposal, and appeared before the panel to make a presentation on April 10, 2007. William Bissett, DNC's President and Empire Board member, appeared on Empire's behalf, along with three other Empire Board members, including an SL Green representative. Bissett's presentation included Empire's VLT plans for Aqueduct. In his presentation, Bissett specifically touted DNC's experience in operating VLTs in New York as a basis for awarding the Racetrack Rights to Empire.

31. Reinforcing its continuing apparent commitment to Empire, between April and July 2007, DNC invested an additional approximately $85,000 in Empire in exchange for additional membership units.

32. In June 2007, press reports suggested that Governor Spitzer was considering proposing the splitting up of the Racetrack Rights, awarding the thoroughbred racing operations to NYRA and awarding the VLT Rights to one of the remaining bidders, which included Empire. Although it was not clear that it would be adopted, this proposed revision highlighted that Empire needed to have members with specialized experience, including DNC's experience in

VLT operations. Governor Spitzer's proposal for a revised bidding process originally drew sharp criticism from members of the Legislature, including then-Senate Majority Leader Joseph Bruno. However, because neither the Governor's office nor the Legislature could dictate by itself how the bidding process would proceed, or which bidder(s) would be selected, the process remained unclear during the summer of 2007. Nevertheless, Empire made it clear to the State that whatever the structure, Empire remained interested in obtaining any or all available Racetrack Rights, or portion thereof.

33. Throughout the summer of 2007, Empire heard rumors that despite DNC's contractual commitments to Empire, DNC had asked certain government officials whether a separate bid solely for the VLT Rights would succeed if DNC ceased its membership in Empire. When Empire confronted DNC about these rumors -- and reminded DNC that DNC was contractually and statutorily prohibited from engaging in such discussions, and could not separately pursue a bid for any portion of the Racetrack Rights as a result of its membership in Empire -- DNC assured Empire that the rumors were false. Based on DNC's assurances, Empire continued to work in conjunction with DNC to revise its bid for resubmission at the end of the summer. As part of this process, Empire gave DNC access to the additional proprietary and confidential information that Empire was developing to strengthen the competitiveness of its bid.

34. The rumors that DNC was circumventing its obligations to Empire persisted. In early September 2007, it was reported that members of the Governor's staff expected members of existing bidding groups, including DNC, to express interest in submitting separate bids for the VLT Rights. Empire again went to DNC to confirm that the rumors that it would seek to submit a separate VLT bid were not accurate, and DNC again assured Empire that that was the case.

35. In September 2007, Governor Spitzer announced his position that the Racetrack Rights should be split and that the portion of the Racetrack Rights comprising actual horse racing operations should be awarded to NYRA. Governor Spitzer further requested that any VLT operator interested in obtaining the right to operate VLTs at Aqueduct, should submit stand-alone bids for that particular portion of the Racetrack Rights.

36. Published reports in September 2007 suggested that the Legislature did not intend to agree to the Governor's proposal to split the Racetrack Rights, award NYRA the racing operation rights, and open the bidding process for the remainder of the Racetrack Rights. In fact, one day after Governor Spitzer's announcement, the New York State Senate announced it was initiating a new bidding process separate from Governor Spitzer's. In September 2007, Senator Bruno confirmed in press reports that the Governor's revised plan for the award of various Racetrack Rights would be "substantially changed."

37. Because Empire was assured by DNC and believed that DNC would abide by the non-competition, non-disclosure and confidentiality provisions of the DNC Contracts, Empire continued to work with and rely upon DNC in preparing its bid for the Racetrack Rights. For weeks in September and early October of 2007, Empire's members consulted DNC about whether Empire should submit an expression of interest to operate the Aqueduct VLT facility in response to the Governor's request. This was a critical decision, as Empire would have to spend additional time and money to develop a stand-alone VLT bid (even though the Legislature appeared to be opposed to the Governor's proposed bidding process). Yet if the Governor did reach agreement with the Legislature on the revised bidding process, Empire wanted to remain in consideration for the award of the VLT Rights. Accordingly, Empire originally concluded that to protect its interests in light of the differing bidding proposals, it should participate

simultaneously in both the original bidding process and the new one proposed by Governor Spitzer.

38. While various members of Empire initially favored participating in the Governor's bidding process, DNC argued against Empire submitting a stand-alone bid for the VLT Rights. Ultimately, DNC -- which was brought into Empire specifically for its VLT experience -- convinced Empire not to submit an expression of interest or to undertake any work to prepare a separate bid for the VLT Rights. On October 3, 2007, for example, DNC argued to the Empire Executive Committee that Empire could not put together a credible bid for the VLT Rights in the short time permitted under the Governor's bidding process. As a result of DNC's arguments and statements, on which Empire relied, Empire decided to forgo the preparation of a stand-alone bid for the VLT Rights. Had DNC not urged against it, Empire would have prepared a bid for the VLT Rights at that time.

39. Instead, Empire focused on preparing for a hearing before the Legislature, scheduled for October 10, 2007. The purpose of that hearing was to take testimony from the various bidders concerning, among other things, why the racing portion of the Racing Rights should not be awarded to NYRA, and why the bidding process should not be revised pursuant to Governor Spitzer's proposal.

40. On October 9, 2007 -- less than one week after the Empire Executive Committee meeting, and less than one week before expressions of interest on the bid for the VLT Rights were due -- DNC abruptly resigned from the Empire Board and Executive Committee and attempted to tender back its ownership interest in Empire. DNC did not claim that it had any contractual right to withdraw from Empire, but only claimed that it was no longer "in the best interest of [DNC]" to remain part of Empire. DNC's conduct was directly contrary to the

termination provisions set forth in the DNC Contracts, including both the Operating Agreement and the July DNC MOU.

41. On October 15, 2007, DNC's true purpose in withdrawing from Empire and persuading Empire to forgo a VLT-only bid was revealed, when DNC announced its partnership with Saratoga Gaming and Raceway ("Saratoga Gaming") to submit a proposal to operate the VLTs at Aqueduct. Such conduct brazenly violated DNC's contractual obligations, as DNC remained contractually bound to Empire and was prohibited, under its non-compete with Empire, from undertaking any actions that would either directly or indirectly compete with Empire in any way for any portion of the Racetrack Rights. Moreover, the timing of DNC's VLT bid, only six days after its resignation from the Empire Board and Executive Committee, reflected that DNC's earlier statements to the Empire Executive Committee were made solely to wrongfully deceive Empire into refraining from preparing and proceeding with a VLT bid.

42. In fact, it was now clear that just as the rumors had suggested -- and contrary to DNC's assurances of its purported commitment to Empire -- DNC for months had been in breach of its contractual and fiduciary obligations to Empire. DNC's breaches of its obligations during this period included, among other things, engaging in undisclosed negotiations with government officials, developing a bid that was intended to compete against Empire's, and using Empire's confidential and proprietary information to develop its own bid.

43. As a direct result of DNC's breaches and other wrongful actions, Empire ultimately lost additional members, and its ability to pursue any of the various Racetrack Rights was severely undermined. Indeed, because of DNC's misconduct, Empire was unable to compete when, several months after DNC's attempted withdrawal from Empire, in mid-February 2008, the Legislature adopted the Governor's proposal that NYRA be awarded the racing portion

of the Racetrack Rights, and opened a bidding process for the other portions of the remaining rights, including the VLT Rights and real estate development at Aqueduct.

E. DNC's Continued Breaches

44. Empire's participation in the bidding process having been hobbled by DNC's misconduct, SL Green and Empire negotiated a new agreement to permit SL Green to pursue a bid for the VLT Rights at Aqueduct in its own name. Pursuant to that agreement, Empire released SL Green from the terms of exclusivity and the non-competition provision contained in SL Green's Memorandum of Understanding with Empire (which contained terms similar to those in the July DNC MOU), and appointed SL Green as the successor-in-interest to Empire for purposes of pursuing and obtaining the VLT Rights at Aqueduct. In return, among other things, SL Green agreed that should it win the bid for the VLT Rights at Aqueduct, it would make certain monetary payments to Empire.

45. Because of DNC's experience as a VLT operator, and DNC's ability to share the costs of preparing a final bid, SL Green attempted to work with DNC even after DNC's attempted withdrawal from Empire. SL Green reminded DNC that DNC was contractually precluded from submitting a bid for the VLT Rights in its own name, and offered to enter into a partnership with DNC to pursue those rights jointly. In its negotiations with DNC over a joint bid for the VLT Rights at Aqueduct, SL Green emphasized that DNC would be required to satisfy its outstanding obligations to Empire, including, for example, sharing with Empire revenues derived from VLT operations.

46. In connection with negotiations for a joint bid, in February 2008, SL Green gave DNC access to the confidential and proprietary information in support of the VLT bid that Empire and SL Green had continued to develop after DNC's purported withdrawal. That

information included SL Green's design and development plans and economic proposals for its bid for the Aqueduct VLT Rights. DNC understood and agreed that this information was being shared with DNC solely for purposes of DNC proceeding as a partner of SL Green in the VLT bidding process.

47. It became clear, however, that DNC did not intend to work jointly with SL Green, and had entered into negotiations to do so only as a means of gaining access to SL Green's confidential business information on which SL Green's bid for the VLT Rights at Aqueduct was to be based. Shortly after reviewing SL Green's confidential bid plans for the VLT Rights at Aqueduct, DNC summarily informed SL Green by e-mail that DNC had decided not to work with SL Green on the bid.

48. DNC then submitted its own VLT bid, in direct competition with SL Green's. Upon information and belief, DNC used its access to SL Green's confidential and proprietary information to make DNC's own bid more competitive with SL Green's, thus again breaching its duties to SL Green.

49. In October 2008 -- almost one year after advising Empire not to submit a VLT bid and then separating from Empire -- DNC was selected by New York State to operate the VLT facility at Aqueduct. As a result, DNC was chosen to oversee up to 4,500 slot machines that are projected to generate hundreds of millions of dollars annually.

50. Having misappropriated the opportunity that rightfully belonged to its partners, DNC recently sought the State's permission to allow it to restructure its bid, saying that it was financially unable to live up to its commitment to the State. Thus, DNC not only wrongfully deprived Empire and SL Green of the opportunity to obtain the VLT Rights, but DNC has also squandered that opportunity by failing to obtain the promised financing in support of its bid.

51. Had DNC lived up to its contractual and fiduciary obligations to Empire and SL Green, enormous cost to Empire, SL Green and, ultimately, the people of New York State, could have been avoided.

52. Under the DNC Contracts, and pursuant to its fiduciary obligations to Empire and SL Green as a member of Empire, and as member of Empire's Executive Committee and Board of Managers, DNC had no right to submit a separate bid for the VLT Rights in direct competition with Empire and SL Green. DNC's purported withdrawal from Empire was improper and not authorized by the terms of the DNC Contracts and DNC has at all relevant times been a member of Empire. Moreover, DNC has at all relevant times been bound by its contractual and common law obligations not to compete against Empire, assist Empire's competitors, and use or divulge Empire's or SL Green's confidential information. DNC is therefore liable to SL Green for (i) the damages that Empire and SL Green incurred in having to prepare bids that ultimately were in direct competition with DNC, and (ii) Empire and SL Green's lost profits relating to the operation of VLTs at Aqueduct.

FIRST CAUSE OF ACTION
(Breach of Contract)

53. SL Green repeats and realleges paragraphs 1 through 52 hereof.

54. The Operating and Subscription Agreements, and DNC's MOUs with Empire, were valid and binding contracts which, among other things, obligated DNC to refrain from separately communicating with government officials regarding the Racetrack Rights and VLT Rights; withdrawing from Empire except under a limited set of circumstances (none of which existed at the time DNC purported to withdraw); using Empire's and SL Green's proprietary and confidential information in connection with the bidding of the Racetrack Rights and VLT Rights;

and directly competing or assisting others to compete with Empire in connection with bids for the Racetrack Rights and VLT Rights.

55. Empire and SL Green each performed all of its contractual obligations under the various contracts with each other and with DNC.

56. DNC unilaterally and without justification breached the Operating and Subscription Agreements, as well as both of its MOUs, when it, among other things: communicated with government officials about its desire to pursue a separate bid for VLT Rights apart from Empire; partnered with Saratoga Gaming to pursue the VLT Rights to the exclusion of Empire and SL Green; attempted to withdraw from Empire without meeting any of the contractual prerequisites necessary to do so; used, upon information and belief, the information it had gained from its relationship with Empire and SL Green in connection with the creation and structuring of its own bids on the VLT Rights; and submitted bids in competition with both Empire and SL Green to obtain the VLT Rights.

57. As a result of DNC's breach of its various contractual obligations, both Empire and SL Green have sustained damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

58. SL Green repeats and realleges paragraphs 1 through 57 hereof.

59. As a member and manager of Empire, DNC owed both Empire and SL Green the duty of loyalty to act at all times in the utmost good faith and in the best interests of Empire and SL Green, including but not limited to, not competing with Empire and SL Green in connection with bidding on the Racetrack Rights and VLT Rights, and not misappropriating, for DNC's own benefit, Empire's and SL Green's proprietary and confidential information so as to prepare a competing bid.

60. As a member and manager of Empire, DNC therefore owed fiduciary duties to Empire and SL Green, including the duty of loyalty.

61. In violation of its duty of loyalty to Empire and SL Green, DNC usurped corporate resources, opportunities, confidential information and trade secrets for its own benefit.

62. In violation of its duty of loyalty to Empire and SL Green, DNC entered into direct competition against Empire and SL Green for the Racetrack Rights and VLT Rights.

63. These fiduciary breaches, including the duty of loyalty, by DNC were substantial factors in rendering Empire unable to continue to pursue bidding for the Racetrack Rights and VLT Rights, and for SL Green's loss of its bid (as successor-in-interest to Empire for that particular purpose) for the VLT Rights.

64. As a result of DNC's breaches of its duties, both Empire and SL Green have sustained damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Unfair Competition)

65. SL Green repeats and realleges paragraphs 1 through 64 hereof.

66. Both Empire and SL Green have devoted significant amounts of labor, skill, money and other resources in connection with researching, planning and developing their various bids and proposals for the Racetrack Rights and the VLT Rights. Empire and SL Green gathered, compiled, formulated and researched information which they developed into a unique and valuable body of knowledge that formed the basis for their various bids for the Racetrack Rights and VLT Rights. The work that Empire and SL Green engaged in to create the bids, as well as the bids themselves, contained proprietary and confidential information.

67. The work that Empire and SL Green undertook in connection with the creation and development of their bids was extremely valuable, enabling Empire and SL Green to

develop their bids in such a way as to maximize the proposed benefit to New York State, while at the same time maintaining high potential profitability to Empire and SL Green.

68. These bids, which were able to maximize the benefit to both the State and to Empire and SL Green, would have been highly competitive and substantially likely to have been selected as the winning bids, except that, in bad faith, DNC exploited and misappropriated both Empire's and SL Green's proprietary and confidential information to compete directly and unfairly against both Empire and SL Green and to submit bids of its own that undercut the terms of Empire's and SL Green's bids.

69. As a direct and proximate result of DNC's unfair competition, Empire and SL Green have each suffered, and will continue to suffer, significant financial losses.

70. As a result of the foregoing, DNC is liable to each of Empire and SL Green for the damages caused by such unfair competition, in an amount to be determined at trial.

71. Because of the egregious nature of DNC's misconduct, plaintiffs should be awarded punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court enter judgment against DNC awarding plaintiffs:

(a) On the First Cause of Action, compensatory damages in an amount to be determined at trial;

(b) On the Second Cause of Action, compensatory damages in an amount to be determined at trial;

(c) On the Third Cause of Action, compensatory and punitive damages in amounts to be determined at trial;

(d) their costs, expenses, and reasonable attorney's fees;

(e) pre-judgment and post-judgment interest at the highest rate(s) provided by law; and

(f) such other and further relief as the Court deems just and proper.

Dated: April 17, 2009

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