

FILED

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
MECKLENBURG COUNTY	SUPERIOR COURT DIVISION
	CIVIL FILE NO.: 14CVS 8300

ROBERT SIMMER, on behalf of himself and  
all others similarly situated,

Plaintiff,

vs.

POKERTK, INC., MULTIMEDIA GAMES  
HOLDING COMPANY, INC.,  
MULTIMEDIA GAMES, INC., 23  
ACQUISITION CO., JAMES CRAWFORD,  
JOE LAHTI, LYLE BERMAN, LOU WHITE  
and ARTHUR L. LOMAX,

Defendants.

CLASS ACTION COMPLAINT

### CLASS ACTION COMPLAINT

Plaintiff, Robert Simmer, by his attorneys, on behalf of himself and those similarly situated, files this action against the defendants, and alleges upon information and belief, except for those allegations that pertain to it, which are alleged upon personal knowledge, as follows:

### SUMMARY OF THE ACTION

1. Plaintiff brings this shareholder class action on behalf of himself and all other public shareholders of PokerTek, Inc. ("PokerTek" or the "Company"), against PokerTek, its Board of Directors (the "Board" or the "Individual Defendants"), Multimedia Games Holding Company, Inc. Multimedia Games, Inc., (collectively, "MGI") and Merger Sub ("Merger Sub") (collectively, the "Defendants"), arising out of a transaction under which MGI will acquire each issued and outstanding share of PokerTek in an all-cash transaction valued at \$1.35 per share (the "Proposed Acquisition" or "Merger").

2. As a condition to MGI entering into the definitive Agreement and Plan of Merger (the "Merger Agreement"), on April 29, 2014, Mark D. Roberson, PokerTek's CEO, CFO and Treasurer, Gehrig H. White and defendants Lyle A. Berman ("Berman"), James T. Crawford ("Crawford"), Joseph J. Lahti ("Lahti"), Arthur L. Lomax ("Lomax"), in each case as a shareholder and/or an option holder of the Company and members of the Company's management and/or members of the Board, entered into a voting agreement with MGI (the "Voting Agreement"), whereby each shareholder party to the Voting Agreement agreed to vote all of the shares of common stock of the Company owned beneficially by such shareholder, including, but not limited to, any shares of common stock of the Company that such voting shareholder has the right to vote due to any agreement, proxy or other similar right (i) in favor of adoption of the Merger Agreement and in favor of the Merger, (ii) against (A) any proposal made in opposition to adoption of the Merger Agreement or in competition or inconsistent with the Merger or any other transaction contemplated by the Merger Agreement, (B) any Company Takeover Proposal (as defined in the Merger Agreement), including a Superior Proposal, (C) any change in the management or the Board of the Company (other than as contemplated by the Merger Agreement), (D) any sale or transfer of a material amount of the assets or capital stock of the Company or any of its subsidiaries, (E) any action, matter, agreement or proposal submitted to shareholders of the Company for approval, if it could reasonably be expected that, or if such shareholder has actual knowledge that the approval of such action, matter, agreement or proposal would result in a breach of any representation, warranty, covenant or agreement or any other obligation of the Company under the Merger Agreement, and (F) any action, proposal, transaction or agreement that is intended or could reasonably be expected to impede, interfere with, delay, discourage, inhibit, postpone, or adversely affect the Merger or the other

transactions contemplated by the Merger Agreement. The shareholders who are parties to the Voting Agreement own approximately 36% of the shares entitled to vote on the Merger.

3. In approving the Proposed Acquisition, however, the Individual Defendants have breached their fiduciary duties of loyalty, good faith, due care and disclosure by, *inter alia*, (i) agreeing to sell to Defendants without first taking steps to ensure that Plaintiff and Class members (defined below) would obtain adequate, fair and maximum consideration under the circumstances; and (ii) engineering the Proposed Acquisition to benefit themselves and/or Defendants without regard for PokerTek's public shareholders. Moreover, as alleged further herein, Defendants aided and abetted the Individual Defendants' breaches of fiduciary duty. Accordingly, this action seeks to enjoin the Proposed Acquisition and compel the Individual Defendants to properly exercise their fiduciary duties to PokerTek's shareholders.

### **PARTIES**

4. Plaintiff, Robert Simmer, is a citizen of the United States and the state of Minnesota, residing at 7016 Chicago Avenue, Richfield, MN. Plaintiff has been a shareholder of PokerTek at all times relevant hereto, and continues to be a shareholder of PokerTek.

5. Defendant PokerTek is a North Carolina corporation whose principal executive offices are located at 1150 Crews Road, Suite F, Matthews, North Carolina 28105. PokerTek develops, manufactures, and markets electronic table games and related products for casinos, cruise line casinos, card clubs, and lotteries worldwide. PokerTek, Inc. was formerly known as National Card Club Corporation and changed its name to PokerTek, Inc. in July 2004 as a result of its merger with PokerTek, LLC. PokerTek's common stock is publicly traded on NASDAQ under the symbol "PTEK."

6. Defendant Crawford co-founded PokerTek and has served as an Executive Officer and as a member of the Board of Directors since the inception in August 2003, and currently serves

as President and Secretary. Crawford executed a Voting Agreement as a condition precedent to MGI signing the Merger Agreement pursuant to which he has, among other thing, agreed to vote shares of PTEK stock beneficially owned by him in favor of the Merger and against any competing or alternative transaction.

7. Defendant Lahti serves as Chairman of the PokerTek Board. Lahti executed a Voting Agreement as a condition precedent to MGI signing the Merger Agreement pursuant to which he has, among other thing, agreed to vote shares of PTEK stock beneficially owned by him in favor of the Merger and against any competing or alternative transaction.

8. Defendant Berman co-founded PokerTek and served as Chairman of the Board of Directors from January 2005 - September 2011. Berman executed a Voting Agreement as a condition precedent to MGI signing the Merger Agreement pursuant to which he has, among other thing, agreed to vote shares of PTEK stock beneficially owned by him in favor of the Merger and against any competing or alternative transaction.

9. Defendant White co-founded PokerTek and served as Chief Executive Officer since the inception in August 2003. White's role transitioned from CEO to Vice Chairman of the Board in September 2007. White executed a Voting Agreement as a condition precedent to MGI signing the Merger Agreement pursuant to which he has, among other thing, agreed to vote shares of PTEK stock beneficially owned by him in favor of the Merger and against any competing or alternative transaction.

10. Defendant Lomax co-founded PokerTek and served as member of the Board since the inception in August 2003. Lomax executed a Voting Agreement as a condition precedent to MGI signing the Merger Agreement pursuant to which he has, among other thing, agreed to vote shares of

PTEK stock beneficially owned by him in favor of the Merger and against any competing or alternative transaction.

11. Defendants named in paragraphs 6-10 are referred to herein as "Individual Defendants" or "Director Defendants."

12. By reason of their positions as officers and/or directors of the Company, the Individual Defendants named above are in a fiduciary relationship with Plaintiff and the other public shareholders of PokerTek and owe them the highest duties of good faith, loyalty and due care, as set forth in further detail herein.

13. Defendant Multimedia Games Holding Company, Inc. is duly incorporated and principally located in the state of Texas at 206 Wild Basin Road, South Building B, Austin, TX 78746. Multimedia Games Holding Company, Inc., through its wholly owned subsidiary MGI, develops and distributes gaming technology. The company's stock is publicly traded on the Nasdaq under the symbol "MGAM."

14. Defendant MGI is a wholly owned subsidiary of Multimedia Games Holding Company, Inc. MGI is duly incorporated and principally located in the state of Texas at 206 Wild Basin Road, South Building B, Austin, TX 78746.

15. Defendant Merger Sub is a North Carolina corporation and a wholly owned subsidiary of MGI.

#### **JURISDICTION AND VENUE**

16. This Court has personal jurisdiction over the Defendants pursuant inasmuch as Defendants directly or by agents transacted business in Mecklenburg County, North Carolina, through the agreement to purchase PokerTek, whose principal place of business is located in Mecklenburg County.

17. Venue is proper in this Court, inasmuch as there are multiple defendants whose principal place of business is located in Mecklenburg, North Carolina, and thus can be sued for damages in this County.

### **SUBSTANTIVE ALLEGATIONS**

18. On April 29, 2014, PokerTek entered into the Merger Agreement by and among the Company, MGI and the Merger Sub in an all-cash transaction valued at \$1.35 per share. The transaction has a total approximate value of \$12.6 million. The press release states in relevant part:

**[April 30], 2014 – Matthews, NC – PokerTek, Inc. (Nasdaq: PTEK)**  
("PokerTek") announced today that it has entered into a definitive agreement and plan of merger with Multimedia Games, Inc., a subsidiary of Multimedia Games Holding Company, Inc. (Nasdaq: MGAM) (together, "Multimedia Games"), pursuant to which Multimedia Games has agreed to acquire PokerTek at a price of \$1.35 per share in cash.

Completion of the transaction is subject to the approval by holders of a majority of the Company's common shares, the receipt of certain gaming approvals, and other customary closing conditions. PokerTek's Board of Directors unanimously approved the merger agreement with Multimedia Games and has recommended that the Company's shareholders adopt the merger agreement. Assuming the satisfaction of conditions, the transaction is expected to close in calendar 2014.

Mark Roberson, PokerTek's Chief Executive Officer, stated, "Combining with Multimedia Games provides our shareholders with the opportunity to receive a healthy premium for their shares and is an ideal situation for our customers, employees and other commercial partners. PokerTek and Multimedia Games share a similar operating philosophy and culture, focusing on superior customer service and delivering products that generate strong returns for casino operators. As part of the Multimedia Games organization, we believe further development of innovative products and solutions will address the growing demand for eTables from casino customers and players worldwide."

Pat Ramsey, Chief Executive Officer of Multimedia Games, added, "With eTable growth accelerating in domestic and international casinos, acquiring PokerTek represents an excellent opportunity to expand our product portfolio. We believe the PokerPro product is an excellent complement to our existing business and that we can expand the penetration of PokerPro in North America by leveraging our strong domestic manufacturing, sales and service capabilities. Further, with a growing installed base of gaming positions internationally, this transaction represents a solid entry point to further diversify our revenue and geographic

base. This transaction reflects Multimedia Games' strategic emphasis on offering leading products that resonate with our customers' players and increasing our share of the casino gaming floor."

Joe Lahti, Chairman of the Board of Directors of PokerTek added, "The team at PokerTek has done an outstanding job over the past several years turning the company around financially, building a dominant market position and cultivating strong customer relationships. Merging with Multimedia Games is a positive event for our shareholders and marks the beginning of an exciting new chapter for PokerTek."

### ***Transaction Details***

Completion of the transaction is subject to the approval by holders of a majority of the Company's common shares, the receipt of certain gaming approvals, and other customary closing conditions (which is not conditioned on financing). Assuming the satisfaction of conditions, the transaction is expected to close in calendar 2014.

Burrill Securities acted as financial advisor, and Morse, Zelnick, Rose & Lander, LLP acted as legal advisor, to the Company.

19. Based on the Company's recent financial performance and historical trading prices, the \$1.35 per share Merger Consideration is woefully inadequate. While the press release announcing the Proposed Acquisition would have one believe that PokerTek's shareholders are being given an "opportunity to receive a healthy premium for their shares," the truth is, shares of PTEK traded in excess of the Merger consideration as recently as September 11, 2013 when shares traded as high as \$1.43 per share. In addition, as recently as December 9, 2013, PokerTek was trading as high as \$1.30 per share. Therefore, any premium represented by the offer price is negligible at best.

20. It is particularly disappointing and questionable that the Company's Board would elect to sell PokerTek for such a nominal premium in light of the Company's stellar and improving financial results. For example, following a disappointing first half of 2012, PokerTek realized a 41% increase in recurring revenue fro Q2 2012 to Q4 2012, a decrease in operating expenses by 26% and

an increase in gross margins to 70%. Fiscal 2012 was the second consecutive year that PokerTek posted positive EBITDAS and PokerTek CEO Mark Roberson was considerably bullish in the year end press release dated March 7, 2013, when discussing the Company's future outlook:

Business momentum and recurring revenue trends strengthened significantly in the second half of the year. We increased our penetration in the United States and Canada and also began our re-entry into Mexico, driving a 41% sequential increase in recurring revenue over the past six months. Compared to prior year, fourth quarter operating results improved 57%, bringing PokerTek to within two cents of profitability in the fourth quarter.

Entering 2013, our growth plans include entering several new markets including Macaus, Columbia, Uruguay and Peru, while also expanding our current presence in the United States, Canada and Mexico. Building on our momentum from 2012, we are well positioned to deliver recurring revenue and earnings growth in 2013.

21. In the fiscal year 2012 year end results, PokerTek's "Annual Business Outlook" predicted by:

execut[ing] plans to enter several new markets, expand penetration in existing markets and obtain additional regulatory approvals for its products during 2013 ... the Company expects to build on the momentum from the second half of 2012, increase recurring revenue while maintaining gross margins in the high 60% to low 70% range and controlling expense growth to leverage its operations. As a result, the Company expects its financial results to continue to improve in 2013.

22. PokerTek quickly capitalized on the momentum it achieved in 2012 when it announced on March 26, 2013 that it had renewed its contract with Carnival Corporation & plc through December 2017.

23. Similarly, on September 11, 2013, PokerTek was "honored to have been selected by MSC [Cruises] to bring electronic poker to its fleet." The contract with MSC, the third largest cruise line in the world, calls for 8 of MSC's 12 ships to carry PokerTek technology with initial installations to occur "in the coming months."



24. True to its word, on March 12, 2014, the Company issued Q4 and full fiscal year 2013 results which saw total revenue increase, gross margins increase, and a third consecutive year of positive EBITDAs. Stated Mark Roberson:

Financially, 2013 was a solid year posting recurring revenue growth, strong gross margins and significant improvements in net operating results and cash flow [...] We also achieved several important marketing and product development milestones during the year, entering new gaming markets in Macau and South America, growing our cruise ship penetration, achieving regulatory approvals for our ProCore product line, and initiating our expansion into mobile gaming.

25. Accordingly, PokerTek having accomplished all it set out to do in the last year including but not limited to penetrating new markets, obtaining greater regulatory approval, maintaining huge gross margins while reducing debt and becoming profitable for the very first time, the future has never been so bright for this Company. Despite this, the Company's Board has agreed to sell PokerTek for a price that does not reflect the Company's inherent value or future growth potential

26. In furtherance of the sale of the Company and as a condition precedent to MGI signing the Merger Agreement, each of the Individual Defendants and certain of the Company's executive officers has entered into a Voting Agreement pursuant to which they have agreed to vote the shares of PokerTek stock beneficially owned by them in favor of the Merger and against any and all competing, alternative, or superior proposals to acquire the Company. Collectively, the parties to the Voting Agreements own approximately 36% of PokerTek's outstanding common stock.

27. In addition, at the effective time of the Merger, each outstanding and unvested option to purchase PokerTek stock will be canceled in exchange for the Merger consideration. Significantly, the Individual Defendants and additional parties to the Voting Agreements collectively own thousands of unvested stock options for which they will receive immediate liquidity at the effective time of the Merger.

28. The Proposed Acquisition will allow Defendants to purchase PokerTek at an unfairly low price while availing itself of PokerTek's significant value and upside or long-term potential.

#### **PRECLUSIVE DEAL PROTECTION DEVICES**

29. Moreover, the Merger Agreement contains certain provisions that unduly benefit Defendants by making an alternative transaction either prohibitively expensive or otherwise impossible. For example, the Merger Agreement contains a termination fee provision that requires PokerTek to pay \$650,000 to MGI if the Merger Agreement is terminated in connection with a Company Takeover Proposal. Under one scenario, PokerTek must pay this fee even if it consummates any Acquisition Proposal (as defined in the Merger Agreement) within *12 months* following the termination of the Merger Agreement.

30. The Merger Agreement also contains a "no-shop" provision that restricts PokerTek from considering alternative acquisition proposals by, *inter alia*, constraining PokerTek's ability to solicit or communicate with potential acquirers or consider their proposals. Specifically, the provision prohibits PokerTek from soliciting any alternative proposal, but permits the Board to consider an unsolicited proposal only if it constitutes or is reasonably calculated to lead to a "written Company Takeover Proposal" as defined in the Merger Agreement. However, even the Board's consideration of unsolicited proposal is restricted: prior to considering any such proposal, the Board must determine, in consultation with its financial advisors, that its fiduciary duties require it to consider the proposal. Thus, the Board cannot consider alternative proposals even if it reasonably believes that any such proposal would be beneficial to shareholders.

31. Further, the Agreement further reduces the possibility of a topping offer from an unsolicited purchaser. Here, PokerTek agreed to provide Defendants information in order to match any other offer, thus providing Defendants access to the unsolicited bidder's financial information

and giving Defendants the ability to top the superior offer. Thus, a rival bidder is not likely to emerge with the cards stacked so much in favor of Defendants.

32. Accordingly, the Company's true value is compromised by the consideration offered in the Proposed Acquisition and the Proposed Acquisition is the product of the Board's breaches of fiduciary duty, aided and abetted by Defendants.

### **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

33. In any situation where the directors of a publicly traded corporation undertake a transaction that will result in either a change in corporate control or a break-up of the corporation's assets, the directors have an affirmative fiduciary obligation to act in the best interests of the company's shareholders, including the duty to obtain maximum value under the circumstances. To diligently comply with these duties, the directors may not take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
  - (b) will discourage or inhibit alternative offers to purchase control of the corporation or its assets;
  - (c) contractually prohibits them from complying with their fiduciary duties;
- and/or
- (d) will provide the directors, executives or other insiders with preferential treatment at the expense of, or separate from, the public shareholders, and place their own pecuniary interests above those of the interests of the company and its shareholders.

34. In accordance with their duties of loyalty and good faith, the Individual Defendants, as directors and/or officers of PokerTek, are obligated to refrain from:

- (a) participating in any transaction where the directors' or officers' loyalties are divided;

(b) participating in any transaction where the directors or officers are entitled to receive a personal financial benefit not equally shared by the public shareholders of the corporation; and/or

(c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

35. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Acquisition, violated, and are violating, the fiduciary duties they owe to Plaintiff and the other public shareholders of PokerTek, including their duties of loyalty, good faith, candor, and due care. As a result of the Individual Defendants' divided loyalties, Plaintiff and Class members will not receive adequate, fair or maximum value for their PokerTek common stock in the Proposed Acquisition.

36. As a result of these breaches of fiduciary duty, the Company's public shareholders will not receive adequate or fair value for their common stock in the Proposed Acquisition.

#### **CLASS ACTION ALLEGATIONS**

37. Plaintiff brings this action as a class action, individually and on behalf of all holders of PokerTek common stock who are being and will be harmed by the Individual Defendants' actions, described herein (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation or other entity related to or affiliated with any Defendant.

38. This action is properly maintainable as a class action because, *inter alia*:

(a) The Class is so numerous that joinder of all members is impracticable. PokerTek's stock is publicly traded on the NASDAQ and Plaintiff believes that there are hundreds if not thousands of holders of such shares. Moreover, the holders of these shares are geographically dispersed throughout the United States;

(b) There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions include, *inter alia*: (i) whether the Individual Defendants have engaged in self-dealing, to the detriment of PokerTek's public shareholders; (ii) whether the Proposed Acquisition is unfair to the Class, in that the price is inadequate and is not the fair value that could be obtained under the circumstances; (iii) whether MGI, Merger Sub and Defendants aided and abetted the Individual Defendants' breaches of fiduciary duty; and (iv) whether the Class is entitled to injunctive relief and/or damages as a result of the wrongful conduct committed by Defendants;

(c) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;

(d) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

(e) Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

## **FIRST CAUSE OF ACTION**

### **(Breach of Fiduciary Duty against the Individual Defendants)**

39. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

40. As alleged herein, Defendants have initiated a process to sell PokerTek that undervalues the Company and vests them with benefits that are not shared equally by PokerTek's public shareholders. Moreover, Defendants failed to sufficiently inform themselves of PokerTek's value, or disregarded the true value of the Company, in an effort to benefit themselves. Furthermore, any alternate acquirer will be faced with engaging in discussions with a management team and board that is committed to the Proposed Acquisition.

41. As such, unless the Individual Defendants' conduct is enjoined by the Court, they will continue to breach their fiduciary duties to Plaintiff and the other members of the Class, and will further a process that inhibits the maximization of shareholder value and the disclosure of material information.

42. Plaintiff and the members of the Class have no adequate remedy at law.

## **SECOND CAUSE OF ACTION**

### **(Aiding and Abetting the Board's Breaches of Fiduciary Duty against Defendants MGI and Merger Sub )**

43. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

44. MGI and the Merger Sub knowingly assisted the Individual Defendants' breaches of fiduciary duty in connection with the Proposed Acquisition, which, without such aid, would not have occurred. In connection with discussions regarding the Proposed Acquisition, Defendants obtained

sensitive non-public information concerning PokerTek's operations and thus had the advantage to acquire the Company at an unfair price.

45. As a result of this conduct, Plaintiff and the other members of the Class have been and will be damaged in that they have been and will be prevented from obtaining a fair price for their shares.

46. Plaintiff and the members of the Class have no adequate remedy at law.

WHEREFORE, Plaintiff demands injunctive relief, in his favor and in favor of the Class, and against the Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action, certifying Plaintiff as Class representative and certifying his counsel as class counsel;

B. Declaring and decreeing that the Proposed Acquisition was entered into in breach of the fiduciary duties of the Individual Defendants and is therefore unlawful and unenforceable, and rescinding and invalidating any merger agreement or other agreements that Defendants entered into in connection with, or in furtherance of, the Proposed Acquisition;

C. Preliminarily and permanently enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition;

D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of PokerTek's shareholders;

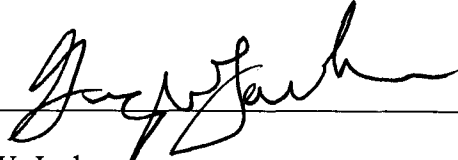
E. Imposing a constructive trust, in favor of Plaintiff and the Class, upon any benefits improperly received by Defendants as a result of their wrongful conduct;

F. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

G. Granting such other and further equitable relief as this Court may deem just and proper.

This the 9<sup>th</sup> day of May, 2014.

Respectfully submitted,



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