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8 Attorneys for the Division of Gambling Control  
9

10 **BEFORE THE**  
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**  
12

13 **In the Matter of the Accusation Against:**

14 **Otho Smith, Sole Proprietor**  
15 **S&K CARDROOM**  
16 **306 F Street**  
17 **Eureka, CA 95502**

18 **License Number GEGE-000206**

Case No. SA06-00114-01

OAH No. \_\_\_\_\_

**STIPULATED SETTLEMENT  
AND DISCIPLINARY ORDER**

19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the  
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. On January 11, 2006, Robert E. Lytle, Jr. ("Complainant") brought an Accusation  
23 and Statement of Issues against Otho Smith—the sole proprietor of S&K Cardroom.  
24 Complainant is the Director of the Division of Gambling Control ("Division") within the  
25 California Department of Justice and brought the above-entitled matter solely in his official  
26 capacity. Complainant is represented in this matter by Christine M. Murphy, Deputy Attorney  
27 General, Office of the Attorney General of the State of California.  
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1 **CULPABILITY**

2 9. Respondent admits the truth of each and every charge and allegation in the  
3 Accusation attached as Exhibit A.

4 10. Respondent agrees that his gambling license is subject to discipline as a result of  
5 the charged allegations and he agrees to be bound by the Commission's imposition of discipline  
6 as set forth in the Disciplinary Order below.

7 **CONTINGENCY**

8 11. This Stipulated Settlement shall be subject to approval by the Commission.  
9 Respondent specifically agrees that, at any time following execution of this Stipulated  
10 Settlement, but prior to the Commission's decision whether to adopt this Stipulated Settlement as  
11 its decision and enter the Disciplinary Order, counsel for Complainant and the staff of the  
12 Division may communicate directly with the Commission regarding this stipulation and  
13 settlement, without notice to, or participation by, Respondent or his counsel, and that no such  
14 communications shall be deemed a prohibited ex parte communication. By signing the  
15 Stipulated Settlement, Respondent specifically agrees that he may not withdraw his agreement or  
16 seek to rescind the Stipulated Settlement prior to the time the Commission considers and acts  
17 upon it. If the Commission fails to adopt this Stipulated Settlement as its decision and  
18 Disciplinary Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
19 effect, and, except for actions taken pursuant to this paragraph, it shall be inadmissible in any  
20 legal action between the parties. The Commission shall not be disqualified from further action  
21 by having considered the Stipulated Settlement.

22 12. The parties specifically agree that facsimile copies of this Stipulated Settlement  
23 and Disciplinary Order, including facsimile signatures thereon, shall have the same force and  
24 effect as the originals.

25 13. In consideration of the foregoing admissions and stipulations, the parties agree  
26 that the Commission may, without further notice or formal proceeding, issue and enter the  
27 following Disciplinary Order:  
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1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that original Gambling License Number GEGE-000206  
3 issued to Respondent Otho Smith be suspended for fifteen (15) days pursuant to California Code  
4 of Regulations, title 4, section 12566, subdivision (b). However, the suspension is stayed and  
5 Respondent is placed on probation for three (3) years upon the following terms and conditions:

6 1. **Payment of Fine and Reimbursement of Division Costs.** Respondent shall pay  
7 a \$4,500 fine and also reimburse the Division its costs of investigation and prosecution in the  
8 amount of \$4,500. Respondent shall make said payments as follows: Respondent shall pay \$250  
9 per month for the next three (3) years of probation. Payments shall be due in the Division's  
10 office no later than the tenth calendar day of the month. Late payments, in and of themselves, or  
11 a pattern and practice of late payments, may, in the Division's discretion, be considered a basis to  
12 revoke Respondent's probation. The filing of bankruptcy by Respondent shall not relieve  
13 Respondent of his responsibility to reimburse the Division its costs of investigation and  
14 prosecution. In the event Respondent decides to sell the S & K Cardroom during the probation  
15 terms, the remaining fine payments and reimbursement costs still due and owing shall be paid  
16 from the proceeds of the sale of the business.

17 2. **Gambling Establishment Jackpot Account Reporting Requirements.**  
18 Respondent agrees, as required by California Code of Regulations, title 4, section 12405,  
19 subdivision (b)(1), to maintain accounting records, in a ledger or other permanent fashion, of all  
20 jackpot moneys collected from patrons and all withdrawals from the jackpot fund for either  
21 payment to patron or for payment of jackpot administrative fees.

22 3. **Obey all Laws.** Respondent shall obey all state and federal laws and regulations  
23 substantially related to, or governing the practice of, cardrooms. Further, Respondent shall report  
24 to the Division any of the following that occur to him, in writing, within seventy-two (72) hours  
25 of such occurrence:

26 • an arrest or issuance of a criminal complaint for violation of any provision of the  
27 Gambling Control Act or any state or federal gambling law;

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- 1           • a plea of guilty or nolo contendere to any criminal complaint, information or  
2 indictment in any state or federal criminal proceeding;
- 3           • a conviction of any crime; and
- 4           • discipline, citation, or other administrative action filed by any state or federal  
5 agency which involves Respondent's license, or which is related to the conduct of controlled  
6 gambling.

✓ 4.   **Reporting to the Commission.** Respondent shall report to the Commission  
8 quarterly. The report shall be made in writing. Respondent shall state under penalty of perjury  
9 whether there has been compliance with all the terms and conditions of probation. If the final  
10 probation report is not made as directed, probation shall be extended automatically until such  
11 time as the final report is made and accepted by the Commission.

12           5.   **Interview with the Commission and Division.** Upon receipt of reasonable  
13 notice, Respondent shall appear in person for interviews with staff of either the Commission or  
14 the Division, at various intervals, at a location to be determined by the requesting agency.  
15 Failure to appear for a scheduled interview without prior notification to the requesting agency  
16 shall be considered a violation of probation.

17           6.   **Cooperation with Commission and Division Staff.** Respondent shall cooperate  
18 with the Division's and Commission's monitoring and investigation of Respondent's compliance  
19 with the terms and conditions of his probation. Failure to comply shall be considered a violation  
20 of probation.

21           7.   **Status of License.** Respondent shall, at all times while on probation, maintain an  
22 active current license issued by the Commission, including any period during which suspension  
23 or probation is tolled.

24           If Respondent's license expires or is canceled by operation of law or otherwise, upon  
25 renewal or re-application Respondent's license shall be subject to all terms and conditions of this  
26 probation not previously satisfied.

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1           8. **License Surrender While on Probation/Status.** Following the effective date of  
2 this Stipulated Settlement and Disciplinary Order, should Respondent decide to cease operating  
3 the gambling establishment, or be otherwise unable to satisfy the terms and conditions of  
4 probation related to the operation of the gambling establishment, Respondent may tender his  
5 license to the Commission for surrender. The Commission shall have the discretion to grant or  
6 deny the request for surrender, or take any other action it deems appropriate and reasonable.  
7 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to  
8 the terms and conditions of probation related to the operation of the gambling establishment but  
9 will not be relieved of his obligation to pay the agreed-upon fine and reimburse the Division for  
10 its investigative costs.

11           Upon acceptance of the surrender, Respondent may not reapply for any Gambling  
12 Establishment license from the Commission for three (3) years from the effective date of the  
13 surrender. Respondent shall meet all requirements applicable to the license sought as of the date  
14 the application for that license is submitted to the Commission.

15           9. **Violation of Probation.** If Respondent violates probation in any respect, the  
16 Commission, after giving Respondent notice and an opportunity to be heard, may revoke  
17 probation and carry out the disciplinary order which was stayed. If a petition to revoke probation  
18 or an accusation is filed against Respondent during probation, the Commission shall have  
19 continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke  
20 probation or accusation is heard and decided.

21           If Respondent has not complied with any term or condition of probation, the  
22 Commission shall have continuing jurisdiction over Respondent, and probation shall  
23 automatically be extended until all terms and conditions have been satisfied or the Commission  
24 has taken other action as deemed appropriate—to treat the failure to comply as a violation of  
25 probation, to terminate probation, and to impose the penalty which was stayed.

26           10. **Completion of Probation.** Upon successful completion of probation,  
27 Respondent's license will be fully restored.

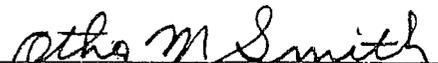
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**ACCEPTANCE**

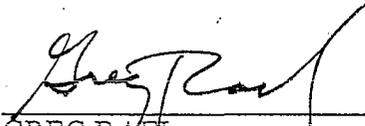
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Greg Rael. I understand the Stipulated Settlement and the effect it will have on my gambling license. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Disciplinary Order of the Commission.

Dated: July 25, 2007

  
\_\_\_\_\_  
OTHO SMITH  
Respondent

I have read and fully discussed with Respondent Otho Smith the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approved its form and content.

Dated: July 25, 2007

  
\_\_\_\_\_  
GREG RAEEL  
Attorney for Respondent

**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Gambling Control Commission.

Dated: July \_\_, 2007

EDMUND G. BROWN JR.  
Attorney General of the State of California

By:   
\_\_\_\_\_  
CHRISTINE M. MURPHY  
Deputy Attorney General  
Attorneys for Complainant

In the Matter of the Accusation Against:

Ortho Smith, Sole Proprietor  
S & K Cardroom

License Number ~~GE#~~ 000206

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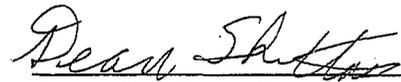
DECISION AND ORDER OF THE COMMISSION:

The attached Stipulation has been adopted by a majority vote of the Commission as its final decision and order in this matter and is effective upon execution below by the Commission Chair.

IT IS SO ORDERED.

Dated: SEP - 6 2007

Signature:



Dean Shelton, Commission Chair