

1 KAMALA D. HARRIS
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 NEIL D. HOUSTON
Deputy Attorney General
4 State Bar No. 168058
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-5476
Fax: (916) 327-2319
7 E-mail: Neil.Houston@doj.ca.gov
Attorneys for Bureau of Gambling Control

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9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

12
13 **In the Matter of the Accusation Against:**

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15 **HER J. XIONG, Sole Proprietor of**
MERCED POKER ROOM
16 **2217 Yosemite Parkway**
Merced, CA 95340

17 **License Number GEGE-000599**
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BGC Case No. SA07-00091-01

OAH No. 2010010608

**AMENDED STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

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

23 **PARTIES**

24 1. At the time this action was brought, Jacob A. Appelsmith was the Chief of the
25 Bureau of Gambling Control, California Department of Justice ("Bureau"). He brought this
26 action solely in his official capacity and was represented in this matter by Edmund G. Brown Jr.,
27 Attorney General of the State of California, by Neil D. Houston, Deputy Attorney General. On or
28 about January 3, 2011, Martin J. Horan IV, became Acting Chief of the Bureau, and is now the

1 Complainant in this action solely in his official capacity. Acting Chief Horan is represented in
2 this matter by Kamala D. Harris, Attorney General of the State of California, by Neil D. Houston,
3 Deputy Attorney General.

4 2. Her J. (Jack) Xiong ("Respondent") owns, as a sole proprietor, the gambling
5 establishment known and doing business as Merced Poker Room, and is currently not represented
6 by an attorney in this action.

7 3. Respondent is the holder of State Gambling Licenses Number GEGE-000599 and
8 GEOW-001440, issued by the California Gambling Control Commission ("Commission").
9 Respondent's licenses, or the predecessors thereto, were in full force and effect at all times
10 relevant to the charges brought. The licenses will expire on April 30, 2012, unless renewed.

11 4. Respondent is in the process of selling his entire interest in the Merced Poker Room.
12 The purchaser has filed an application for licensure with the Commission. The Commission's
13 consideration of the purchaser's application has been stayed, pending the disposition of the First
14 Amended Accusation in this action.

15 JURISDICTION

16 5. Accusation No. BGC SA07-00091-10 was filed before the Commission and
17 superseded by a First Amended Accusation of the same number, which is currently pending
18 against Respondent. The Accusation and all other statutorily required documents were properly
19 served on Respondent on February 27, 2009; the First Amended Accusation and other statutorily
20 required documents were properly served on Respondent on May 6, 2010. Respondent timely
21 filed a Notice of Defense contesting the First Amended Accusation. A copy of (First Amended)
22 Accusation No. BGC SA07-00091-01 is attached as Exhibit A and is incorporated herein by
23 reference. A hearing on the First Amended Accusation was set for July 19, 2010. Shortly prior to
24 the hearing, the parties entered into a stipulated settlement and disciplinary order, and the hearing
25 was taken off-calendar. The Commission subsequently rejected the settlement, and this matter
26 was reset for hearing on May 18, 2011.

27 6. The parties agree that the Commission has jurisdiction over this matter and has
28 authority to approve this Amended Stipulated Settlement and Disciplinary Order ("Stipulation").

1 **CONTINGENCY**

2 7. This Stipulation is subject to final approval by the Commission. This Stipulation
3 shall be submitted by the Bureau to the Commission for approval at a noticed Commission
4 meeting. Respondent shall be provided with written notice of the time, date, and place of the
5 meeting at which this Stipulation will be considered by the Commission. Respondent
6 understands and agrees that Respondent may not withdraw his agreement or seek to rescind the
7 Stipulation prior to the time the Commission considers and acts upon it. If the Commission fails
8 to adopt this Stipulation as its decision and order, the Stipulation shall be of no force or effect,
9 except that Complainant and Respondent agree that this Stipulation shall be inadmissible in any
10 legal action between the parties or for any purpose, and the Commission shall not be disqualified
11 from further action by having considered this matter.

12 8. If the Commission rejects this Stipulation as its decision and order, and no amended
13 agreement or settlement is reached before two additional regularly noticed Commission meetings
14 have concluded or sixty days (60) have elapsed, whichever is later, the Bureau shall proceed with
15 a formal evidentiary hearing of the charges in the First Amended Accusation No. BGC SA07-
16 00091-01 before an Administrative Law Judge from the Office of Administrative Hearings.

17 **ADVISEMENT AND WAIVERS**

18 9. Respondent has carefully read this Stipulation, and has been afforded the opportunity
19 to review and discuss its terms with counsel or other advisor(s) of Respondent's choice.
20 Respondent fully understands the charges and allegations in First Amended Accusation No. BGC
21 SA07-00091-01, and Respondent fully understands the effects of this Stipulation.

22 10. Respondent is fully aware of his legal rights in this matter, including the right to an
23 administrative/evidentiary hearing on the charges and allegations in the First Amended
24 Accusation; the right to confront and cross-examine witnesses; the right to present evidence and
25 to testify; the right to the issuance of subpoenas to compel the attendance of witnesses and the
26 production of documents; the right to reconsideration and court review of an adverse decision;
27 and all other rights accorded by the California Administrative Procedure Act and other applicable
28 laws.

1 11. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth in paragraph 10, above, with respect to this matter and forever gives up any
3 right to challenge the allegations in the First Amended Accusation, to appeal, and to challenge or
4 collaterally attack the terms of this Stipulation.

5 12. Respondent agrees that counsel for the Bureau and the staff of the Bureau may
6 communicate directly with Commission staff regarding this Stipulation, without notice to, or
7 participation by, Respondent or his counsel or other adviser(s) of choice prior to the
8 Commission's consideration of this stipulation at a noticed Commission meeting, and that no
9 such communications shall be deemed a prohibited ex parte communication.

10 **CULPABILITY**

11 13. Respondent admits the truth of each and every charge and allegation in the First
12 Amended Accusation, No. BGC SA07-00091-01. The admissions made by Respondent herein
13 are only for the purposes of this proceeding, or any other proceedings in which the Bureau or the
14 Commission is involved, and shall not be admissible in any other criminal or civil proceeding.
15 These admissions are the equivalent of a "no contest" plea.

16 14. Respondent agrees that Licenses GEGE-000599 and GEOW-001440 are subject to
17 discipline and agrees to be bound by the Commission's imposition of discipline as set forth in the
18 Disciplinary Order below.

19 **OTHER MATTERS**

20 15. The parties understand and agree that electronically transmitted copies of this
21 Stipulated Settlement and Disciplinary Order, including electronically transmitted signatures
22 thereto, shall have the same force and effect as the originals. This Stipulation may be executed in
23 counterparts that when combined shall have the same force and effect as a single original
24 document.

1 **DISCIPLINARY ORDER**

2 In consideration of the foregoing agreements, admissions, and stipulations, the parties agree
3 that the Commission may issue and enter the following Disciplinary Order:

4 IT IS HEREBY ORDERED that State Gambling Licenses GEGE-000599 and GEOW-
5 001440 are revoked. However, the revocation is stayed and Respondent is placed on probation
6 for a period of one (1) year upon the following terms and conditions:

7 **1. Penalty.** Respondent, in lieu of the imposition of revocation, agrees to pay a fine of
8 \$10,000. One-half of this fine (\$5,000) shall be due and payable in three equal installments, the
9 first payment due by no later than thirty-five days (35) days after service¹ upon Respondent of
10 written notice of the Commission’s adoption of this Stipulation, and the final payment due no
11 later than ninety (90) days after said service. One-half of this fine (\$5,000) shall be stayed for a
12 period of one (1) year from the entry of the disciplinary order, at which time it shall become due
13 and payable unless Respondent has consummated the sale of the entirety of his interest in the
14 Merced Poker Room and has surrendered his gambling licenses by no later than twelve (12)
15 months from the date of service of written notice of the adoption of this Stipulated Settlement and
16 Disciplinary Order by the Commission, whereupon the remaining one-half of the fine (\$5,000)
17 shall be forgiven.
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20 **2. Practice Suitable Methods of Operation.** Respondent will not employ individuals
21 who do not hold a valid work permit or license as required by the Gambling Control Act.
22 Respondent will not enter into any transaction for the sale of any portion, or the entirety, of his
23 interest in the Merced Poker Room to any individual(s) or entity without timely reporting the
24 transaction as required by the Gambling Control Act. Respondent will ensure that either he, or a
25 validly licensed key employee, is present at the Merced Poker Room at all times when it is in
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28 ¹ As used herein, “service” shall mean the date of mailing.

1 operation. Respondent will ensure that no tournaments are offered or played at the Merced Poker
2 Room without prior written approval by the Bureau. Respondent shall submit all required
3 financial reports to the Bureau at the times required under the Gambling Control Act.

4 **3. Obey All Laws.** Respondent shall obey all state and federal laws and regulations
5 substantially related to, or governing the practices and operation of gambling establishments.

6 Respondent shall report any of the following occurrences to the Commission, in writing, within
7 seventy-two (72) hours of such occurrence:

8 a) An arrest or issuance of a criminal complaint for violation of any provision of
9 the Gambling Control Act;

10 b) A plea of guilty or nolo contendere, or conviction, in any state or federal
11 criminal proceeding involving any crime other than traffic violations.

12 **4. Cooperation with Commission and Bureau Staff.** Respondent shall cooperate
13 during routine Bureau inspections and in the Bureau's and Commission's monitoring and
14 investigation of Respondent's compliance with the terms and conditions of probation. Failure to
15 cooperate may be deemed a violation of probation.

16 **5. Reimbursement of Bureau Costs.** Respondent agrees to pay the Bureau the sum of
17 \$11,502.63, as reasonable costs for the investigation and prosecution of this matter. However,
18 payment of these costs shall be stayed during the period of probation and shall become due and
19 payable upon the expiration of the period of probation unless Respondent consummates the sale
20 of the entirety of his interest in the Merced Poker Room and surrenders his gambling licenses
21 before the end of the one-year probationary period, in which case the sum of \$11,502.63 as
22 reasonable costs shall be paid to the Bureau out of escrow at the time of sale.

23 **6. Status of Licenses.** Respondent shall, at all times when on probation, maintain active
24 current licenses with the Commission including any period during which suspension or probation
25

1 is tolled. If Respondent's licenses expire or are canceled by operation of law or otherwise, upon
2 renewal or re-application Respondent's licenses shall be subject to all the terms and conditions of
3 this probation not previously satisfied. In the event Respondent fails to consummate a sale of the
4 entirety of his interest in the Merced Poker Room by no later than twelve (12) months after
5 service upon Respondent of written notice of the Commission's adoption of this Stipulated
6 Settlement and Disciplinary Order, Respondent's license shall be revoked by operation of this
7 Stipulated Settlement and Disciplinary Order. Notwithstanding any other provision hereof, the
8 Respondent may apply to the Commission for an extension of the period of probation for up to
9 twelve (12) months upon a showing of good cause such as, but not limited to, license processing
10 delays by the Bureau or Commission, or the rejection of a buyer by the Commission.
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12 **7. License Surrender While On Probation.** Following the effective date of this
13 Stipulated Settlement and Disciplinary Order, should Respondent decide to cease operating the
14 Merced Poker Room, or be otherwise unable to satisfy the terms and conditions of probation
15 related to the operation of the Merced Poker Room for reasons other than a sale of his entire
16 interest in the Merced Poker Room, Respondent may tender his licenses to the Commission for
17 surrender. Upon formal acceptance of the surrender of the licenses, Respondent will no longer be
18 subject to the terms and conditions of probation related to the operation of the gambling
19 establishment, but will not be relieved of his obligation to pay the first one-half of the fine
20 described in paragraph 1, above. Upon formal acceptance of the surrender, Respondent may not
21 reapply for any license from the Commission for three (3) years from the effective date of the
22 surrender. Respondent shall meet all requirements applicable to the license sought as of the date
23 that application is submitted to the Commission.
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25 **8. Violation of Probation.** If Respondent is found to have violated probation in any
26 respect, the Commission, after giving Respondent notice and an opportunity to be heard, may
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1 revoke probation, carry out the disciplinary order that was stayed, and require the payment of all
2 fines and the reasonable costs of investigation and prosecution described above. If the Bureau
3 refers a petition to revoke probation, or an accusation, to the Attorney General for preparation and
4 filing against Respondent during probation, the Commission shall have continuing jurisdiction
5 and the period of probation shall be extended until the petition to revoke probation or accusation
6 is heard and decided, provided Respondent has been served with written notice of such referral
7 within fifteen (15) calendar days of same.

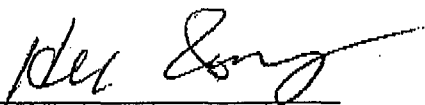
9 If Respondent has not complied with any term or condition of probation, the Commission
10 shall have continuing jurisdiction over Respondent, and probation shall automatically be extended
11 until all terms and conditions have been satisfied or the Commission has taken other action as
12 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
13 probation, and to impose the penalty that was stayed.

15 **9. Effective Date.** This Order shall become effective upon service on Respondent of
16 written notice of the Commission's adoption of this Stipulated Settlement and Disciplinary Order.

17 **ACCEPTANCE**

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have been
19 given the opportunity to review it with an attorney or other advisor of my choice. I understand
20 the Stipulation and the effect it will have on State Gambling Licenses GEGE-000599 and
21 GEOW-001440. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
22 knowingly, and intelligently, and agree to be bound by the Order of the Commission.

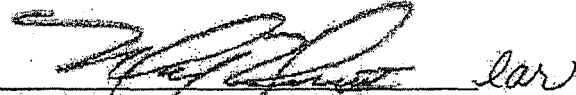
24 Dated: May 16, 2011

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26 HER J. (JACK) XIONG, Sole Proprietor of
27 the Merced Poker Room
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COMPLAINANT'S ACCEPTANCE

Dated: May 16, 2011




MARTIN J. HORAN IV, Acting Chief,
Bureau of Gambling Control

ENDORSEMENT

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

Dated: May 16, 2011

KAMALA D. HARRIS
Attorney General of the State of California

By: 

NEIL D. HOUSTON
Deputy Attorney General
Attorneys for Complainant

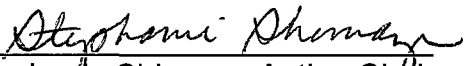
DECISION AND ORDER

DECISION AND ORDER OF THE COMMISSION:

The foregoing 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 members.

IT IS SO ORDERED

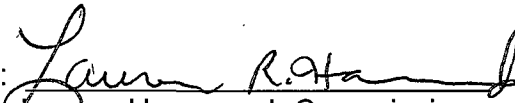
Dated: 6-16-11

Signature: 
Stephanie Shimazu, Acting Chairperson

Dated: 6-16-2011

Signature: 
Tiffany E. Conklin, Commissioner

Dated: 6-16-11

Signature: 
Lauren Hammond, Commissioner