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8  
9 **BEFORE THE**  
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**  
11 **STATE OF CALIFORNIA**

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

14 **POINT-WALKER, INC.,**  
15 **LUCKY DERBY CASINO**  
16 **7433 C Greenback Lane**  
**Citrus Heights, CA 95610**

17 **License Numbers GEGE - 000407, and**  
18 **GEOW-000993**

19 **Kermit D. Schayltz**

20 **License Number GEOW- 000994**

**BGC Case No. SA2008-00036**

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

**ACCUSATION**

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22 Jacob A. Appelsmith, Complainant herein, alleges as follows:

23 **PARTIES**

24 1. Jacob A. Appelsmith ("Complainant") brings this Accusation solely in his official  
25 capacity as the Chief of the Bureau of Gambling Control, California Department of Justice  
26 ("Bureau").  
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28



1 following:

2 \* \* \*

3 (d) Take actions deemed to be reasonable to ensure that no  
4 ineligible, unqualified, disqualified, or unsuitable persons are associated  
with controlled gambling activities.

5 8. Section 19825 provides as follows:

6 The commission may require that any matter that the commission is  
7 authorized or required to consider in a hearing or meeting of an  
8 adjudicative nature regarding the denial, suspension, or revocation of a  
license . . . , be heard and determined in accordance with Chapter 5  
(commencing with section 11500) of Part 1 of Division 3 of Title 2 of the  
9 Government Code.

10 9. Section 19826 provides, in part:

11 The department [of Justice (§ 19805, subd. (h))] shall have all of the following  
12 responsibilities:

13 \* \* \*

14 (b) To monitor the conduct of all licensees and other persons  
15 having a material involvement, directly or indirectly, with a gambling  
16 operation or its holding company, for the purpose of ensuring that  
17 licenses are not issued or held by, and that there is no direct or indirect  
material involvement with, a gambling operation or holding company by  
ineligible, unqualified, disqualified, or unsuitable persons, or persons  
whose operations are conducted in a manner that is inimical to the public  
health, safety or welfare.

18 (c) To investigate suspected violations of this chapter or laws of  
19 this state relating to gambling, including any activity prohibited by  
20 Chapter 9 (commencing with Section 319) or Chapter 10 (commencing  
with Section 330) of Title 9 of Part 1 of the Penal Code.

21 (d) To investigate complaints that are lodged against licensees, or  
22 other persons associated with a gambling operation, by members of the  
public.

23 (e) To initiate, where appropriate, disciplinary actions as provided  
24 in this chapter. In connection with any disciplinary action, the  
25 department may seek restriction, limitation, suspension, or revocation of  
any license or approval, or the imposition of any fine upon any person  
licensed or approved.

26 10. Section 19930 provides in part:

27 (b) If, after any investigation, the department is satisfied that a  
28 license, permit, finding of suitability, or approval should be suspended or  
revoked, it shall file an accusation with the commission in accordance

1 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3  
2 of Title 2 of the Government Code.

3 (c) In addition to any action that the commission may take against  
4 a license, permit, finding of suitability, or approval, the commission may  
5 also require the payment of fines or penalties. However, no fine imposed  
6 shall exceed twenty thousand dollars (\$20,000) for each separate  
7 violation of any provision of this chapter or any regulation adopted  
8 thereunder.

9 (d) In any case in which the administrative law judge recommends  
10 that the commission revoke, suspend, or deny a license, the administrative  
11 law judge may, upon presentation of suitable proof, order the licensee or  
12 applicant for a license to pay the department the reasonable costs of the  
13 investigation and prosecution of the case.

14 (1) The costs assessed pursuant to this subdivision  
15 shall be fixed by the administrative law judge and may not be  
16 increased by the commission. When the commission does not  
17 adopt a proposed decision and remands the case to the  
18 administrative law judge, the administrative law judge may not  
19 increase the amount of any costs assessed in the proposed  
20 decision.

21 (2) The department may enforce the order for  
22 payment in the superior court in the county in which the  
23 administrative hearing was held. The right of enforcement shall  
24 be in addition to any other rights that the department may have  
25 as to any licensee directed to pay costs.

26 (3) In any judicial action for the recovery of costs,  
27 proof of the commission's decision shall be conclusive proof of  
28 the validity of the order of payment and the terms for payment.

(e) Notwithstanding any other provision of law, all costs recovered  
under this section shall be deposited in the fines and penalties account, a  
special account described in subdivision (a) of Section 19950.

(f) For purposes of this section, "costs" include costs incurred for  
any of the following:

(1) The investigation of the case by the department.

(2) The preparation and prosecution of the case by the  
Office of the Attorney General.

#### OTHER PERTINENT STATUTES AND ORDINANCES

11. Section 19805 provides, in part:

As used in this chapter [Gambling Control Act], the following definitions shall apply:

1 (d) "Chief" means the head of the entity within the  
2 department that is responsible for fulfilling the obligations imposed  
upon the department by this chapter.

3 (e) "Commission" means the California Gambling Control  
4 Commission.

5 \* \* \*

6 (h) "Department" means the Department of Justice.

7 \* \* \*

8 (n) "Gambling enterprise employee" means any natural  
9 person employed in the operation of a gambling enterprise,  
including, without limitation, dealers, floor personnel, security  
10 employees, countroom personnel, cage personnel, collection  
personnel, surveillance personnel, data-processing personnel,  
11 appropriate maintenance personnel, waiters and waitresses, and  
secretaries, or any other natural person whose employment duties  
12 require or authorize access to restricted gambling establishment  
areas.

13 \* \* \*

14 (ak) "Work permit" means any card, certificate, or permit issued  
15 by the commission, or by a county, city, or city and county, whether  
denominated as a work permit, registration card, or otherwise,  
16 authorizing the holder to be employed as a gambling enterprise  
employee or to serve as an independent agent. A document issued  
17 by any governmental authority for any employment other than  
gambling is not a valid work permit for the purposes of this chapter.

18  
19 12. Section 19850 provides, in part:

20 Every person who, either as owner, lessee, or employee, whether for  
21 hire or not, either solely or in conjunction with others, deals, operates,  
carries on, conducts, maintains, or exposes for play any controlled game  
22 in this state, or who receives, directly or indirectly, any compensation or  
reward, or any percentage or share of the money or property played, for  
23 keeping, running, or carrying on any controlled game in this state, shall  
apply for and obtain from the commission, and shall thereafter maintain, a  
24 valid state gambling license, key employee license, or work permit, as  
specified in this chapter.

25  
26 13. Section 19852 provides, in part, that with an exception not applicable here for  
27 card clubs located on grounds of a racetrack, an owner of a gambling enterprise that is not  
28 a natural person shall not be eligible for a state gambling license unless each of the  
following persons individually applies for and obtains a state gambling license:

1 (a) If the owner is a corporation, then each officer, director,  
2 and shareholder, other than a holding or intermediary company, of  
3 the owner. The foregoing does not apply to an owner that is either  
4 a publicly traded racing association or a qualified racing  
5 association.

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10 14. Section 19855 provides, in part:

11 Except as otherwise provided by statute or regulation, every  
12 person who, by statute or regulation, is required to hold a state  
13 license shall obtain the license prior to engaging in the activity or  
14 occupying the position with respect to which the license is  
15 required.

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19 15. Section 19874 provides, in part:

20 Subject to subdivision (b) of Section 19851 [no separate  
21 license for specified persons, but rather license is endorsed on  
22 license of owner], the commission shall issue and deliver to the  
23 applicant a license entitling the applicant to engage in the activity  
24 for which the license is issued, together with an enumeration of any  
25 specific terms and conditions of the license if both of the following  
26 conditions have been met:

27 (a) The commission is satisfied that the applicant is eligible  
28 and qualified to receive the license.

(b) All license fees required by statute and by regulations of  
the commission have been paid.

16. Section 19883 provides, in part:

(a) To the extent required by this chapter, officers and directors,  
shareholders, lenders, holders of evidence of indebtedness, underwriters,  
agents, or employees of a corporate owner licensee shall be licensed  
individually. The corporation shall require these persons to apply for a  
gambling license, and shall notify the department of every change of  
corporate officers, directors, or key employees within 10 business days  
after the change. An officer, director, or key employee who is required to  
apply for a license shall apply for the license within 30 calendar days  
after he or she becomes an officer, director, or key employee.

\* \* \*

(e) If any person, other than an officer, director, or shareholder,  
who is required to apply for a gambling license fails to do so, the failure  
may be deemed to be a failure of the corporate owner licensee to require  
the application.

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17. Section 19912 provides, in part:

(a)(1) A person shall not be employed as a gambling enterprise employee . . . unless he or she is the holder of one of the following:

(A) A valid work permit issued in accordance with the applicable ordinance or regulations of the county, city, or city and county in which his or her duties are performed.

(B) A work permit issued by the commission . . . .

18. Section 19920 provides, in part:

The responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the commission or by local government shall constitute grounds for license revocation or other disciplinary action.

19. Section 19922 provides as follows:

No owner licensee shall operate a gambling enterprise in violation of any provision of this chapter or any regulation adopted pursuant to this chapter.

20. Section 19923 provides as follows:

No owner licensee shall operate a gambling enterprise in violation of any governing local ordinance.

21. Section 19960 provides, in part:

This chapter shall not prohibit the enactment, amendment, or enforcement of any ordinance by any city . . . relating to licensed gambling establishments that is not inconsistent with this chapter.

22. City of Citrus Heights Ordinance section 10-32 (Citrus Heights Municipal Code, ch. 10, art. II, § 10-32), subdivision (a) provides as follows:

No person shall work in a cardroom as a manager, employee or independent agent, and no person who holds a special business license authorizing operation of a cardroom shall employ any person as a cardroom manager, employee or independent agent unless such person possesses a valid

1 employee permit issued pursuant to chapter 22, article II, division 3, and this  
2 article.

3 23. City of Citrus Heights Ordinance section 10-37 provides, in part:

4 The holder of a special business license issued pursuant to this article  
5 [II, Cardrooms] and chapter 22, article 11, division 3 [business licenses for  
6 businesses potentially injurious to the public interest (Citrus Heights Code, §  
7 22-27)], shall be financially and otherwise responsible for the operation of the  
8 cardroom and for the conduct of any manager or other employee connected  
9 with the operation of the cardroom.

10 24. Commission regulation section 12554 (tit. 4, Cal. Code of Regs.) provides, in part:

11 (d) Upon a finding of a violation of the Act, any regulations  
12 adopted pursuant thereto, any law related to gambling or gambling  
13 establishments, violation of a previously imposed disciplinary or license  
14 condition, or laws whose violation is materially related to suitability for a  
15 license, registration, permit, or approval, the Commission may do any one  
16 or more of the following:

17 (1) Revoke the license, registration, permit, finding of suitability,  
18 or approval;

19 (2) Suspend the license, registration, or permit;

20 (3) Order the licensing authority of a city, county, or city and  
21 county to revoke a work permit, pursuant to Business and Professions  
22 Code section 19914, subdivision (a);

23 (4) Impose any condition, limitation, order, or directive (including  
24 but not limited to a directive to divest an interest in a business entity  
25 pursuant to Business and Professions Code, section 19879);

26 (5) Impose any fine or monetary penalty consistent with Business  
27 and Professions Code sections 19930, subdivision (c) and 19943,  
28 subdivision (b);

(6) Stay, in whole or in part, the imposition of a revocation or  
suspension against the holder of a license, registration, work permit,  
finding of suitability, or approval; or

(7) Order the holder to pay a monetary penalty in lieu of all or a  
portion of a suspension. Within the guidelines of Business and  
Professions Code sections 19930, subdivision (c) and 19943,  
subdivision (b):

(A) If the respondent is an owner licensee of a gambling  
establishment, the monetary penalty shall be equivalent of fifty percent  
of the average daily gross gaming revenue, but not less than \$300, for  
the number of days for which the suspension is stayed.



1 (a) A license for an individual or any finding of suitability or approval  
2 granted by the Commission, other than a work permit, and an owner license for  
3 a gambling establishment if the owner licensee has committed a separate  
4 violation from any violations committed by the gambling establishment shall be  
5 subject to a minimum discipline of suspension for one day of normal business  
6 operation and a maximum discipline of revocation, which may be stayed on  
7 terms and conditions and any monetary penalty as described in Section  
8 12554(d)(7) of this chapter, if the Commission finds that the holder has:

9 \* \* \*

10 (2) Been found, by any administrative tribunal or court in a  
11 separate proceeding, to have violated or be in violation of any law  
12 involving or relating to gambling, where the penalty imposed was a  
13 monetary fine or citation,

14 \* \* \*

15 (5) Committed any act punishable as a crime, not otherwise  
16 listed in these disciplinary guidelines, which substantially relates to the  
17 duties and qualifications of the licensee or registrant, or which occurred in  
18 a gambling establishment or the associated adjacent property, or

19 (6) Engaged in any conduct on the premises of the gambling  
20 establishment or in connection with controlled gambling that is inimical  
21 to the health, welfare, or safety of the general public.

22 (b) A license, finding of suitability, or approval granted by the  
23 Commission, other than a work permit, and an owner license for a gambling  
24 establishment if the owner licensee has committed a separate violation from any  
25 violations committed by the gambling establishment shall be subject to a  
26 minimum discipline of suspension for five days of normal scheduled work and  
27 a maximum discipline of revocation, which may be stayed on terms and  
28 conditions and any monetary penalty as described in Section 12554(d)(7) of this  
chapter, if the Commission finds that the holder has:

\* \* \*

(4) Committed an act prohibited by Chapter 9 (commencing with  
section 319) and Chapter 10 (commencing with section 330) of Title 9 of  
Part 1 of the Penal Code, including but not limited to operation of a banked  
or percentage game (Penal Code, section 330), possession or sale of a slot  
machine (Penal Code, section 330b) or agreement for slot machine payout  
(Penal Code, section 330.1), bookmaking (Penal Code, section 337), and  
cheating (Penal Code, section 337x),

\* \* \*

(8) As an owner licensee, not taken reasonable steps to prevent the  
crimes listed in subsections (b), paragraphs (5) through and including (7),

1 from occurring at the gambling establishment, when the owner licensee  
2 knew or should have known that these crimes were being committed.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Operating Unlicensed Tables)**

5 27. At all times pertinent to this accusation, Respondent Owner held a Commission-  
6 issued gambling establishment license that permitted operation of only nine (9) tables.

7 28. Complainant is informed and believes and thereon alleges that on or about March 25,  
8 2008 and April 1, 2008, and for approximately one year prior thereto, Respondent Owner and  
9 Respondent Schayltz, as the Cardroom manager, directly and/or through failure to implement  
10 reasonable oversight procedures to prevent such conduct, allowed the Cardroom to operate with  
11 eleven (11) tables for the play of controlled games, in violation of sections 19920 and 19922.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Employee Without Valid Required Work Permit or License)**

14 29. Complainant is informed and believes and thereon alleges that Respondent Owner at  
15 all times alleged in this accusation held a special business license issued by the City of Citrus  
16 Heights authorizing operation of the Cardroom.

17 30. Complainant is informed and believes and thereon alleges that during the period  
18 March 2, 2008 through April 3, 2008, Respondent Owner with participation and/or approval of  
19 Respondent Schayltz, directly and/or through failure to implement reasonable oversight  
20 procedures to prevent such conduct, employed or otherwise retained Phetsomboun Pat  
21 Syviengchan (Syviengchan) to play in controlled games despite the fact that Syviengchan's  
22 employee permit required by City of Citrus Heights ordinance was expired, in violation of  
23 sections 19920, 19922, 19923, 19912, subdivision (a)(1)(A), all by virtue of City of Citrus  
24 Heights Ordinance section 10-32.

25 **PRIOR DISCIPLINE/WARNING**

26 31. The licenses of Respondent Owner and Respondent Schayltz were the subject of a  
27 prior disciplinary action by the Commission, *In the Matter of the Accusation Against: Point-*  
28

1 Walker, Inc., Lucky Derby Casino, Kermit Schayltz, shareholder, Leo Chu, Shareholder, DGC #  
2 SA 04-00090-1, OAH No. N2007050782, in which action Respondent Owner and Respondent  
3 Schayltz stipulated that their respective state gambling licenses were subject to discipline as a  
4 result of the then charged allegations. In this prior action Respondent Owner further specifically  
5 admitted the truth of the allegations in the First (operating gambling establishment known as Don  
6 Juan Club and Casino which respondents were not licensed to operate), Second (employing "key  
7 employees" of the Cardroom who were not licensed by the Commission as required), and Third  
8 (operating gambling establishment without holding special business license required by local  
9 ordinance) Causes for Discipline contained in the First Amended Accusation, with the  
10 Commission by its Amended Stipulated Settlement and Disciplinary Order issued July 26, 2007  
11 ordering Respondent Owner to pay a fine of \$30,000 and to pay the Department \$5,000 for its  
12 costs of investigation and prosecution of the action.

13 32. Complainant is informed and believes and thereon alleges that Respondent Schayltz  
14 and the Cardroom were previously warned, by Department of Justice letter dated May 18, 2005,  
15 that a person shall not be employed as a gambling establishment employee unless he or she is the  
16 holder of a valid work permit issued in accordance with applicable ordinances.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
19 and that following the hearing, the Commission issue a decision:

20 1. Imposing a penalty on Respondents Point-Walker, Inc. and Kermit D. Schayltz under  
21 the foregoing applicable statutes and regulations that may include a license suspension or  
22 revocation, and/or a monetary fine.

23 2. Awarding Complainant, pursuant to subdivisions (d) and (f) of Business and  
24 Professions Code section 19930, the costs of investigation and costs of preparation and  
25 prosecution of this Accusation before the Commission, in a sum of no less than \$6,948.00,  
26 according to proof; and

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3. Taking such other and further action as the Commission may deem appropriate.

Dated: December 6, 2010

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JACOB A. APPELSMITH, Chief  
Bureau of Gambling Control  
California Department of Justice  
Complainant