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

12
13 **In the Matter of the Statement of Issues**
Against:
14
15 **ROBERT BROWN and**
DEUCES WILD, INC., dba
16 **DEUCES WILD CASINO & LOUNGE**
13483 Bowman Road, Suite A
17 **Auburn, CA 95603**
18 **License Number GEGE-000474**

CGCC Case No. _____

OAH No. _____

STATEMENT OF ISSUES

19 Martin J. Horan IV, Complainant herein, alleges as follows:

20 **PARTIES**

21 1. Martin J. Horan IV ("Complainant") brings this Statement of Issues solely in his
22 official capacity as the Acting Chief of the Bureau of Gambling Control, California Department of
23 Justice ("Bureau").

24 2. Respondent Deuces Wild, Inc., the gambling enterprise doing business as the Deuces
25 Wild Casino and Lounge, is located at 13483 Bowman Road, Suite A, Auburn, California 95603,
26 and at all times relevant herein operated under State Gambling License GEGE 000474, issued by
27 the California Gambling Control Commission ("Commission") pursuant to the Gambling Control
28 Act (Bus. & Prof. Code, § 19800, et seq., the "Act").

1 in this same letter, Respondents stated that they would be seeking reconsideration of the
2 Commission's decisions on both of the denials.

3 15. By letter of November 2, 2010 from Commission staff to Respondents' counsel, the
4 Commission confirmed the denials of Respondents' renewal application and their request to
5 relocate their gambling establishment. Commission staff also informed Respondents that no
6 request for reconsideration of the denials would be considered until the decisions were finalized
7 after the evidentiary hearing process. This letter further notified Respondents that they could
8 continue to operate their gambling enterprise at the current location listed on their state gambling
9 pending the outcome of the evidentiary hearing process.

10 16. By letter of November 10, 2010 from Respondents' counsel to Commission staff,
11 Respondents again sought reconsideration of the denial decisions by the Commission. By letter of
12 November 30, 2010, the Commission staff repeated its denial of the request for reconsideration.
13 Respondents made two further requests for reconsideration of the Commission's decisions in these
14 matters that were similarly denied by Commission staff.

15 JURISDICTION

16 17. This Statement of Issues is brought before the Commission pursuant to the authority
17 detailed in paragraphs 18 through 26, below.

18 18. Business and Professions Code section 19810 states:

19 Except as otherwise provided in this chapter, any power or authority
20 of the department^[1] described in this chapter may be exercised by the
21 Attorney General or any other person as the Attorney General may
delegate.

22 19. Business and Professions Code section 19826 provides in part as follows:

23 The department shall have all of the following responsibilities:

24 (a) To investigate the qualifications of applicants before any
25 license, permit, or other approval is issued, and to investigate any

26 ¹ The "department" referred to in the Gambling Control Act, Business and Professions
27 Code section 19800 et seq., is the Department of Justice (Bus. & Prof. Code, § 19805, subd. (h)).
28 The Bureau of Gambling Control is within the Department of Justice, Division of Law
Enforcement.

1 request to the commission for any approval that may be required
2 pursuant to this chapter. The department may recommend denial or
3 the limitation, conditioning, or restriction of any license, permit or
4 other approval.

5 20. Business and Professions Code section 19811, in relevant part, states:

6 (b) Jurisdiction, including jurisdiction over operation and
7 concentration, and supervision over gambling establishments in this
8 state and over all persons or things having to do with the operation of
9 gambling establishments is vested in the commission.

10 21. Business and Professions Code section 19823 provides as follows:

11 (a) The responsibilities of the commission include, without
12 limitation, all of the following:

13 (1) Assuring that licenses, approvals, and permits are
14 not issued to, or held by, unqualified or disqualified persons,
15 or by persons whose operations are conducted in a manner
16 that is inimical to the public health, safety, or welfare.

17 (2) Assuring that there is no material involvement,
18 directly or indirectly, with a licensed gambling operation, or
19 the ownership or management thereof, by unqualified or
20 disqualified persons, or by persons whose operations are
21 conducted in a manner that is inimical to the public health,
22 safety, or welfare.

23 (b) For the purposes of this section, "unqualified person"
24 means a person who is found to be unqualified pursuant to the criteria
25 set forth in Section 19857, and "disqualified person" means a person
26 who is found to be disqualified pursuant to the criteria set forth in
27 Section 19859.

28 22. Business and Professions Code section 19824 provides in part as follows:

The commission shall have all powers necessary and proper to
enable it fully and effectually to carry out the policies and purposes of
this chapter, including, without limitation, the power to do all of the
following:

* * *

(b) For any cause deemed reasonable by the commission, deny
any application for a license, permit, or approval provided for in this
chapter or regulations adopted pursuant to this chapter, limit, condition,
or restrict any license, permit, or approval, or impose any fine upon any
person licensed or approved.

* * *

1 (c) Approve or disapprove transactions, events, and processes as
2 provided in this chapter.

3 * * * *

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

7 * * * *

8 (e) Take actions deemed to be reasonable to ensure that
9 gambling activities take place only in suitable locations.

10 23. During all times relevant to Respondents' renewal application in this Statement of
11 Issues, Business and Professions Code section 19876, subdivision (a) provided as follows:

12 Subject to the power of the commission to deny, revoke, suspend,
13 condition, or limit any license, as provided in this chapter, a license shall
14 be renewed upon application for renewal and payment of state gambling
15 fees as required by statute or regulation. Licenses renewed on or before
16 July 31, 2008, shall be for the renewal period in effect at the time of the
17 renewal but shall not expire any sooner than 15 months after the approval
18 of the renewal application. Licenses renewed on or after August 1, 2008,
19 shall expire 24 months after the date of the approval of the renewal
20 application or after the expiration of the prior license, whichever is later.

21 24. Business and Professions Code section 19870 provides in part as follows:

22 (a) The commission, after considering the recommendation of the
23 chief and any other testimony and written comments as may be presented
24 at the meeting, or as may have been submitted in writing to the
25 commission prior to the meeting, may either deny the application or grant
26 a license to an applicant who it determines to be qualified to hold the
27 license.

28 (b) When the commission grants an application for a license or
approval, the commission may limit or place restrictions thereon as it may
deem necessary in the public interest, consistent with the policies
described in this chapter.

(c) When an application is denied, the commission shall prepare
and file a detailed statement of its reasons for the denial.

(d) All proceedings at a meeting of the commission relating to a
license application shall be recorded stenographically or on audiotape or
videotape.

25. Business and Professions Code section 19825 provides:

The commission may require that any matter that the commission is

1 authorized or required to consider in a hearing or meeting of an
2 adjudicative nature regarding the denial, suspension, or revocation of a
3 license, permit, or a finding of suitability, be heard and determined in
4 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
5 Division 3 of Title 2 of the Government Code.

6 26. Commission regulation section 12050 (Cal. Code Regs., tit. 4, § 12050) provides in
7 pertinent part as follows:

8 (a) If the Bureau, after an investigation pursuant to Business
9 and Professions Code section 19826, subdivision (a), issues a
10 recommendation to deny, limit, restrict, or condition a license, permit,
11 or finding of suitability, the Bureau shall provide the applicant with a
12 copy of the Bureau's final report as described in Business and
13 Professions Code section 19868, subdivision (b), which includes a
14 detailed factual and/or legal basis for any recommendation as well as
15 the Bureau's recommendation to the Commission and any
16 supplemental documents provided to the Commission at the time of
17 the report and recommendation. Any applicant for any license,
18 permit, or finding of suitability for whom Commission staff has
19 issued a recommendation of denial or imposition of conditions shall
20 be given notice by certified mail of the Commission meeting at which
21 the application is scheduled to be heard and the Commission staff
22 recommendation [made] at least 10 days prior to the meeting. The
23 applicant shall be afforded the opportunity to:

24 (1) Address the Commission by way of an oral
25 statement at a noticed Commission meeting, and/or may
26 submit documents in support of the application, or

27 (2) Request an evidentiary hearing.

28 (b) If the applicant requests an evidentiary hearing or the
Commission elects to have an evidentiary hearing, the Executive
Director shall set the matter for hearing pursuant to Business and
Professions Code sections 19870 and 19871, or pursuant to Business
and Professions Code section 19825 (conducted pursuant to Chapter 5
(commencing with section 11500) of Part 1 of Division 3 of Title 2 of
the Government Code).

(1) If the hearing is to proceed pursuant to Business
and Professions Code section 19825 (Chapter 5 (commencing
with section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code; California Code of Regulations, title 1, section
1000 et seq.), the hearing shall be before an administrative law
judge sitting on behalf of the Commission. Notice shall be
effected pursuant to Government Code section 11500 et seq.

* * *

1 (3) At the hearings described in subsections (b)(1) and
2 (2) above, the burden of proof rests with applicant to demonstrate
3 why a license, permit, or finding of suitability should be issued or
4 not conditioned. The applicant may choose to represent himself,
5 herself, or itself, or may retain an attorney or lay representative at
6 his, her, or its own expense. A representative of the Bureau shall
7 present the reasons why the license, permit, or finding of
8 suitability should not be granted or should be granted with
9 conditions imposed. In the event that the Bureau does not present
10 the case, the Commission may seek outside representation or one
11 or more Commission staff members shall be segregated and
12 present the case.

13 (c) If the application is denied or conditions imposed:

14 (1) The Commission's decision shall provide the
15 effective date of the decision and may include further directions as
16 to stay provisions or orders to divest.

17 (2) If the denied applicant is an officer, director,
18 employee, agent, representative, or independent contractor of a
19 corporation licensed, registered, or found suitable by the
20 Commission, the denied applicant shall resign according to the date
21 specified in the decision and shall so notify the Commission in
22 writing.

23 * * *

24 (6) An applicant denied a license, permit, registration,
25 or finding of suitability, or whose license, permit, registration, or
26 finding of suitability has had conditions imposed upon it may
27 request reconsideration by the Commission within 30 days of
28 notice of the decision. The request shall be in writing and shall
outline the reasons for the request, which must be based upon
either newly discovered evidence or legal authorities that could not
reasonably have been presented before the Commission's issuance
of the decision or at the hearing on the matter, or upon other good
cause for which the Commission in its discretion decides merits
reconsideration. The Commission Chair may delegate to the
Executive Director the authority to determine whether to place
requests for reconsideration on the Commission agenda or to act on
them at the Commission staff level. If placed on the Commission
agenda, the applicant requesting reconsideration shall be notified of
the date and time of the agenda item. The granting or denial of
reconsideration is at the discretion of the Commission. The
Commission shall notify the applicant requesting reconsideration
whether or not reconsideration is granted or denied within 30 days
of the applicant's request. If the Commission grants
reconsideration, the effective date of the decision shall be stayed or

1 vacated, at the Commission's discretion, while the decision is
2 reconsidered.

3 27. Business and Professions Code, section 19930 provides, in part:

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

10 ***

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

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

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

16 **OTHER PERTINENT STATUTORY AND REGULATORY PROVISIONS**

17 28. Business and Professions Code section 19805 provides in part as follows:

18 As used in this chapter, the following definitions shall apply:

19 * * *

20 (b) "Applicant" means any person who has applied for, or is
21 about to apply for, a state gambling license, . . . or an approval of
22 any act or transaction for which the approval or authorization of the
23 commission or department is required or permitted under this
24 chapter.

25 * * *

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

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

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

* * *

(p) "Gambling license" or "state gambling license" means any license issued by the state that authorizes the person named therein to conduct a gambling operation.

* * *

(aj) "Renewal license" means the license issued to the holder of an initial license that authorizes the license to continue beyond the expiration date of the initial license.

29. Business and Professions Code section 19851, subdivision (a) states:

(a) The owner of a gambling enterprise shall apply for and obtain a state gambling license. The owner of a gambling enterprise shall be known as the owner-licensee.

30. Business and Professions Code section 19856, subdivision (a) states:

(a) Any person who the commission determines is qualified to receive a state license, having due consideration for the proper protection of the health, safety, and general welfare of the residents of the State of California and the declared policy of this state, may be issued a license. The burden of proving his or her qualifications to receive any license is on the applicant.

31. Business and Professions Code section 19857 provides in part as follows:

No gambling license shall be issued unless, based on all of the information and documents submitted, the commission is satisfied that the applicant is all of the following:

* * *

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person that is in all other respects qualified to be licensed as provided in this chapter.

32. Business and Professions Code section 19859 provides in part as follows:

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(1) A completed application:

37. Commission regulation 12400 (Cal. Code Regs., tit. 4, § 12400) states in pertinent part:

(a) Except as otherwise provided in subdivision (b), the definitions in Business and Professions Code section 19805 shall govern the construction of this chapter.

(b) As used in this chapter:

* * * *

(7) "Group III licensee" means a licensee with a reported gross revenue of less than \$ 2 million for the preceding fiscal year.

38. Commission regulation 12400, subdivision (b)(7) (Cal. Code Regs., tit. 4, § 12380, subd. (d)(3)), states:

(b) As used in this chapter:

* * * *

(7) "Group III licensee" means a licensee with a reported gross revenue of less than \$ 2 million for the preceding fiscal year.

39. Commission regulation 12403, subdivision (a) (Cal. Code Regs., tit. 4, § 12403, subd. (a)), states in pertinent part:

(a) A licensee shall prepare financial statements covering all financial activities of the licensee's gambling operation for each fiscal year, in accordance with generally accepted accounting principles unless otherwise provided in this section. If the licensee (or a person or entity that has an interest, control, or common control with the licensee) owns or operates lodging, food, beverage, or any other non-gambling operation at the establishment, the financial statements must reflect the results of the gambling operation separately from those non-gambling operations.

* * * *

(4)(A) A Group III licensee with a gross revenue of less than \$500,000 per year shall prepare financial statements that include, at a minimum, a statement of financial position and a statement of income or statement of operations. If the licensee is unable to produce the financial statements, it shall do

1 one of the following:

2 1. Engage an independent accountant licensed
3 by the California Board of Accountancy to perform a
4 compilation of the licensee's annual financial statements in
5 accordance with standards for accounting and review
6 services or with currently applicable professional accounting
7 standards and management may elect not to provide footnote
8 disclosures as would otherwise be required by generally
9 accepted accounting principles.

10 2. Submit to the Bureau and Commission no
11 later than 120 calendar days following the end of the year
12 covered by the federal income tax return, copies of the
13 licensee's complete signed and duly filed federal income tax
14 return for the tax year in lieu of the financial statements as
15 otherwise required under this section.

16 40. Bureau regulation 2070 (Cal. Code Regs., tit. 11, § 2070), states in pertinent part:

17 It shall be an unsuitable method of operation for a gambling establishment
18 to:

19 (a) Offer for play any game that is prohibited or made unlawful
20 by statute, local ordinance, regulation, or final judgment by a
21 competent court of law;

22 (b) Offer to play any gaming activity which is not authorized
23 by the Bureau pursuant to the Act and these regulations for play at
24 that gambling establishment;

25 **FIRST CAUSE FOR DENIAL OF RENEWAL APPLICATION**

26 **(Business and Professions Code Section 19857—
27 Unsuitability in the Operation of the Gambling Business and
28 the Financial Arrangements Incidental Thereto)**

41. Complainant incorporates by this reference each and every allegation contained in
paragraphs 1 through 40, above, as though set forth herein full.

42. As of July 22, 2010, Respondent Brown owed past due federal taxes and/or interest and
penalties in the amount of \$96,689.00.

43. As of August 22, 2011, Respondent Brown owes overdue federal taxes, interest, and/or
penalties for past tax years as follows:

a. 2009 – \$22,715.02.

b. 2006 – \$41,941.96.

c. 2004 – \$2,301.82.

- 1 d. 2003 – \$11,872.21.
- 2 e. 2002 – \$13,218.90.
- 3 f. 2001 – \$31,230.20.

4 44. Respondent Brown did not file tax returns for the years 2000 through 2004.

5 45. On September 9, 2009, based upon Respondent Brown’s failure to pay his state
6 obligations, a state tax lien in the amount of \$9,313.00 was filed against the Gambling
7 Establishment. That tax obligation is now current.

8 46. As of July 29, 2010, Respondent Brown had past due accounts as follows:

- 9 a. Home Mortgage – \$62,478.00.
- 10 b. Bank of America Home Equity Account – \$207,794.00.
- 11 c. Chase Bank Home Equity Account – \$113,455.00.
- 12 d. Citibank Credit Card – \$8,368.00.
- 13 e. Chase Bank Credit Card – \$2,038.00.
- 14 f. Advanta Credit Card – \$1,375.00.

15 47. Respondents are defendants in a breach of contract lawsuit filed on August 26, 2000,
16 by the former owners of the Casino, Phil Hawkins and Linda Hawkins (the “Hawkins”), on a
17 \$1,100,000.00 “Promissory Note” executed by Respondent Brown on May 1, 2007, a “Security
18 Agreement” executed by the Hawkins and Respondent Brown on May 1, 2007, and a “Personal
19 Guaranty” of the Promissory Note executed by Respondent Brown on May 1, 2007, all in made in
20 connection with Respondent Brown’s purchase of the Casino from the Hawkins. While
21 Respondent Brown has cross-complained for fraud, among other things, all of the documents
22 described in this paragraph contain apparent payment obligations or security obligations on the
23 part of Respondent Brown.

24 48. On or about March 9, 2009, a “Notice of Default and Election to Sell under a Deed of
25 Trust” was recorded in Placer County with respect to the real property on which the Deuces Wild
26 Casino has operated under Respondents’ state gambling license.

27 49. Respondent Brown entered into a promissory note for a loan of \$400,000.00 from
28 Jamey and John Robinson to Brown for purposes of Respondents making payment(s) on the loan

1 from the Hawkins that is described in paragraph 46 above. Respondent Brown defaulted on the
2 loan from the Robinsons on November 1, 2007. Because of Respondent Brown's inability to meet
3 his obligations under the loan from the Robinsons, on April 15, 2010, the payments to the
4 Robinsons under the promissory note were renegotiated. As of August 2010, the amount that
5 Respondent Brown owes on the loan from the Robinsons is \$246,475.63.

6 50. Respondents' application for renewal is subject to denial by reason of allegations set
7 forth in this first cause for denial, in that Respondents have failed to establish the suitability of the
8 operation of the gambling enterprise and the financial arrangements incidental thereto under
9 Business and Professions Code section 19857, subdivision (b).

10 **SECOND CAUSE FOR DENIAL OF RENEWAL LICENSE APPLICATION**
11 **(Business and Professions Code Sections 19859, Subdivisions (a) and (b)—**
12 **Failure to Disclose Required Information on Renewal Application)**

13 51. Complainant incorporates by this reference each and every allegation contained in
14 paragraphs 1 through 50, above, as though set forth herein full.

15 52. In their application to renew their state gambling license filed on July 29, 2009, as
16 referenced in paragraph 6, above, Respondents failed to disclose required information as follows:

17 a. The personal loan of from Jamey and John Robinson to Respondent Brown as
18 referenced in paragraph 48, above;

19 b. The loan, promissory note, security agreement, and personal guaranty executed
20 on May 1, 2007 by Respondent Brown to the Hawkins for \$1,100,000.00, and the demand made to
21 Respondents for payment of that loan on July 16, 2009, all of which is the subject of the lawsuit
22 referenced in paragraph 46, above; and

23 c. A commercial lease entered into on September 1, 2007, between Respondent
24 Brown, as the lessor, and Respondent Deuces Wild, Inc, as the lessee.

25 53. Respondents' application for renewal is subject to denial by reason of allegations set
26 forth in this second cause for denial, in that Respondents failed to disclose information on their
27 renewal application as required under Business and Professions Code section 19859, subdivisions
28 (a) and (b).

1 section 2070 (Cal. Code Regs., tit. 11, § 2070), prohibiting licensed gambling enterprises from
2 offering of "prohibited or unlawful" forms of gambling.

3 58. On or about August 19, 2010, the Bureau issued a Letter of Warning to Respondents
4 regarding their violation of the Penal Code and the Bureau regulations in offering the jackpot and
5 promotion.

6 59. Respondents' application for renewal is subject to denial by reason of allegations set
7 forth in this third cause for denial, in that Respondents engaged in unsuitable, unfair, or illegal
8 practices, methods, and activities in the conduct of controlled gaming in carrying on their business
9 and violated of commission regulations.

10 **CAUSE FOR DENIAL OF REQUEST FOR RELOCATION**

11 **(Business and Professions Code Section 19824, subdivisions (b), (c), (d) and (e)—**
12 **Denial of Relocation of Gambling Establishment Based upon Respondents'**
13 **Unsuitability for Licensure)**

14 60. Complainant incorporates by this reference each and every allegation contained in
15 paragraphs 1 through 59, above, as though set forth herein full.

16 61. Respondents' application for relocation of the Deuces Wild Casino and Lounge is
17 subject to denial by reason of allegations set forth in the first, second, and third causes for denial of
18 their renewal application, in that Respondents are not suitable for licensure as a gambling
19 enterprise under the Act and, accordingly, may not relocate their gambling establishment.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held pursuant to the procedures set
22 forth in Business and Professions Code sections 19870, 19871, and 19876 on the matters herein
23 alleged, and that following the hearing, the Commission issue a decision:

24 1. Denying the application of Respondents Deuces Wild, Inc., and Robert Brown for
25 renewal of their State Gambling License for the Deuces Wild Casino & Lounge;

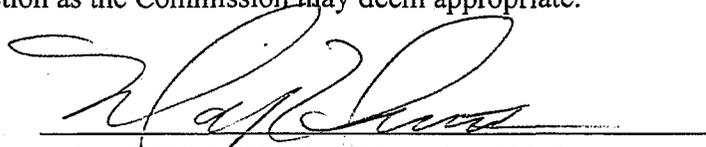
26 2. Denying the requests of Respondents Deuces Wild, Inc., and Robert Brown to relocate
27 the gambling establishment;

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- 3. Awarding Complainant, pursuant to subdivisions (d) and (f) of Business and Professions Code section 19930, the costs of investigation and costs of preparation and prosecution of this Statement of Issues before the Commission, in a sum according to proof; and
- 4. Taking such and further action as the Commission may deem appropriate.

Dated: October 26, 2011



MARTIN J. HORAN IV, Acting Chief
Bureau of Gambling Control
California Department of Justice
Complainant