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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 and**
14 **Statement of Issues Against:**

15 **JOSE ALVAREZ CAHUE, Sole Proprietor**
16 **CEASAR'S CLUB**
17 **184 Main Street**
Watsonville, CA 95076

18 **License Number GEGE-000485**

BGC Case No.

OAH No. _____

ACCUSATION AND
STATEMENT OF ISSUES

19
20 Jacob A. Appelsmith, Complainant herein, alleges as follows:

21 **PARTIES AND BACKGROUND**

22 1. Jacob A. Appelsmith ("Complainant") brings this Accusation and Statement of Issues
23 solely in his official capacity as Chief of the Bureau of Gambling Control ("Bureau") of the
24 California Department of Justice ("Department").

25 2. Jose Alvarez Cahue ("Respondent Owner") owns, as a sole proprietor, the gambling
26 enterprise presently known and doing business as Caesar's Club, located at 184 Main Street,
27 Watsonville, California 95076 ("Cardroom"). Respondent Owner is presently the holder of
28

1 gambling license number GEGE-000485 issued by the California Gambling Control Commission
2 (“Commission”).

3 3. On or about May 28, 2009, the Commission received an Application for renewal of
4 Respondent Owner’s license.

5 4. On or about June 24, 2010, the Commission declined to renew Respondent Owner’s
6 license, and referred the matter for an evidentiary hearing.

7 5. On or about July 1, 2010, Commission staff informed Respondent Owner of the June
8 24, 2010 Commission action. Respondent Owner’s license term thereafter expired on June 30,
9 2010, but by the Commission’s July 1, 2010 communication, Respondent Owner was authorized
10 to continue to operate the Cardroom until the Commission has issued a final decision on
11 Respondent Owner’s application to renew his license. This proceeding is filed in order to provide
12 an evidentiary hearing to allow the Commission to issue its decision on the license renewal
13 application.

14 JURISDICTION

15 6. This Accusation and Statement of Issues is brought before the Commission pursuant
16 to the authority detailed in the following paragraphs.

17 7. Business and Professions Code¹ section 19810 states:

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

22 8. Section 19811 provides in part:

23 (b) Jurisdiction, including jurisdiction over operation and
24 concentration, and supervision over gambling establishments in this state
25 and over all persons or things having to do with the operations of
26 gambling establishments is vested in the commission.

27 9. Section 19823 provides in part:

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

¹ All section references are to the Business and Professions Code unless otherwise stated.

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

5 (2) Assuring that there is no material involvement,
6 directly or indirectly, with a licensed gambling operation, or
7 the ownership or management thereof, by unqualified or
8 disqualified persons, or by persons whose operations are
9 conducted in a manner that is inimical to the public health,
10 safety, or welfare.

11 10. Section 19824 provides in part:

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

15 * * *

16 (b) For any cause deemed reasonable by the commission, deny any
17 application for a license, permit, or approval provided for in this chapter or
18 regulations adopted pursuant to this chapter, limit, condition, or restrict
19 any license, permit, or approval, or impose any fine upon any person
20 licensed or approved. The commission may condition, restrict, discipline
21 or take action against the license of an individual owner endorsed on the
22 license certificate of the gambling enterprise whether or not the
23 commission takes action against the license of the gambling enterprise.

24 * * *

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

28 11. Section 19826 provides as follows:

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

* * *

(b) To monitor the conduct of all licensees and other persons having
a material involvement, directly or indirectly, with a gambling operation
or its holding company, for the purpose of ensuring that 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.

(c) To investigate suspected violations of this chapter or laws of this

1 state relating to gambling, including any activity prohibited by Chapter 9
2 (commencing with Section 319) or Chapter 10 (commencing with Section
330) of Title 9 of Part 1 of the Penal Code.

3 (d) To investigate complaints that are lodged against licenses, or
4 other persons associated with a gambling operation; by members of the
public.

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

8 12. Section 19930 provides in part:

9 (b) If, after any investigation, the department is satisfied that a
10 license, permit, finding of suitability, or approval should be suspended or
11 revoked, it shall file an accusation with the commission in accordance
with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
of Title 2 of the Government Code.

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

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

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

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

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

28 (e) Notwithstanding any other provision of law, all costs recovered
under this section shall be deposited in the fines and penalties account, a

1 special account described in subdivision (a) of Section 19950.

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

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

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

7 13. Commission regulation section 12050 (tit. 4, Cal. Code Regs., § 12050) states in part
8 the following:

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

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

26 (2) Request an evidentiary hearing.

27 (b) If the applicant requests an evidentiary hearing or the Commission
28 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 (2) If the hearing is to proceed pursuant to Business and
2 Professions Code sections 19870 and 19871, notice shall be effected by
3 the Commission, and the hearing before the Commission shall be
4 conducted pursuant to Business and Professions Code section 19871:

4 (A) The Bureau or Commission staff or Deputy
5 Attorney General or other representative presenting the case
6 (Complainant) shall provide the applicant, at least 30 calendar
7 days prior to the hearing, a list of potential witnesses with the
8 general subject of the testimony of each witness and shall
9 disclose and make available copies of all documentary evidence
10 intended to be introduced at the hearing and not previously
11 provided, reports or statements of parties and witnesses and all
12 other writings containing relevant evidence, including all
13 evidence made available to the Commissioners. The applicant
14 shall provide Complainant with similar information to be
15 introduced at the hearing and not previously provided at least
16 ten calendar days prior to the hearing. The Commissioners may
17 prohibit testimony of a witness that is not disclosed and may
18 prohibit the introduction of documents that have not been
19 disclosed.

13 (B) Nothing in this section confers upon an applicant a
14 right to discovery of the Commission's or Bureau's confidential
15 information or to require production of any document or
16 information the disclosure of which is otherwise prohibited by
17 any provision of the Gambling Control Act, or is privileged
18 from disclosure or otherwise made confidential by law.
19 Documentary evidence may be redacted as needed to prevent
20 the disclosure of confidential information. Exculpatory or
21 mitigating information shall not be withheld from the applicant,
22 but may be redacted.

19 (C) Within the guidelines of subsection (b)(2)(A) above,
20 each party shall have the right to call and examine witnesses; to
21 introduce relevant exhibits and documentary evidence; to cross-
22 examine opposing witnesses on any relevant matter, even if the
23 matter was not covered in the direct examination; to impeach
24 any witness, regardless of which party first called the witness to
25 testify; and to offer rebuttal evidence. If the applicant does not
26 testify on the applicant's own behalf, the applicant may be
27 called and examined as if under cross-examination.

25 (D) The hearing need not be conducted according to
26 technical rules of evidence. Any relevant evidence may be
27 considered, and is sufficient in itself to support findings if it is
28 the sort of evidence on which responsible persons are
accustomed to rely in the conduct of serious affairs, regardless
of the existence of any common law or statutory rule that might
make improper the admission of that evidence over objection in

1 a civil action. A presiding officer, which shall be an
2 administrative law judge or an attorney designated by the
3 Commission, shall rule on the admissibility of evidence and on
any objections raised.

4 (E) Oral evidence shall be taken upon oath or
5 affirmation, which may be administered by a staff member of
the Commission or by a Commissioner.

6 (F) The hearing shall be stenographically or
7 electronically recorded by the Commission.

8 (G) At the conclusion of the hearing, the Commission
9 shall take the matter under submission and may schedule future
10 closed session meetings for deliberation. In taking the matter
11 under consideration, any Commissioner who participated at the
12 hearing shall be allowed to vote by mail or by other appropriate
13 method. Within 30 days of the conclusion of the hearing, the
Commission shall issue a decision which complies with
14 Business and Professions Code section 19870, subdivision (c),
15 and shall serve the decision by certified mail on the applicant
16 and on any business entity with which the applicant is
17 associated.

18 (3) At the hearings described in subsections (b)(1) and (2)
19 above, the burden of proof rests with applicant to demonstrate why a
20 license, permit, or finding of suitability should be issued or not
21 conditioned. The applicant may choose to represent himself, herself, or
22 itself, or may retain an attorney or lay representative at his, her, or its
23 own expense. A representative of the Bureau shall present the reasons
24 why the license, permit, or finding of suitability should not be granted or
25 should be granted with conditions imposed. In the event that the Bureau
26 does not present the case, the Commission may seek outside
27 representation or one or more Commission staff members shall be
28 segregated and present the case.

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

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

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

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(6) An applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions imposed upon it may request reconsideration by the Commission within 30 days of 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 vacated, at the Commission's discretion, while the decision is reconsidered.

OTHER PERTINENT STATUTES

14. Section 19805 provides as follows:

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

* * *

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

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

* * *

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

* * *

(o) "Gambling establishment," "establishment," or "licensed premises" except as otherwise defined in Section 19812, means one or more rooms where any controlled gambling or activity directly related thereto occurs.

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

3 * * *

4 (s) "House" means the gambling establishment, and any owner,
5 shareholder, partner, key employee, or landlord thereof.

6 * * *

7 (z) "License" means a gambling license, key employee license, or any
8 other license issued by the commission pursuant to this chapter or regulations
adopted pursuant to the chapter.

9 (aa) "Licensed gambling establishment" means the gambling premises
encompassed by a state gambling license.

10 * * *

11 (ad) "Owner licensee" means an owner of a gambling enterprise who
12 holds a state gambling license.

13 * * *

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

16
17 15. Section 19856 provides:

18 (a) Any person who the commission determines is qualified to receive
19 a state license, having due consideration for the proper protection of the health,
20 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
21 his or her qualifications to receive any license is on the applicant.

22 (b) An application to receive a license constitutes a request for a
determination of the applicant's general character, integrity, and ability to
23 participate in, engage in, or be associated with, controlled gambling.

24 (c) In reviewing an application for any license, the commission shall
25 consider whether issuance of the license is inimical to public health, safety, or
welfare, and whether issuance of the license will undermine public trust that
26 the gambling operations with respect to which the license would be issued are
free from criminal and dishonest elements and would be conducted honestly.

1 16. Section 19857 provides:

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

5 (a) A person of good character, honesty, and integrity.

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

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

15 17. Section 19920 provides:

16 It is the policy of the State of California to require that all
17 establishments wherein controlled gambling is conducted in this state be
18 operated in a manner suitable to protect the public health, safety, and
19 general welfare of the residents of the state. The responsibility for the
20 employment and maintenance of suitable methods of operation rests with
21 the owner licensee, and willful or persistent use or toleration of methods
22 of operation deemed unsuitable by the commission or by local government
23 shall constitute grounds for license revocation or other disciplinary action.

24 18. Section 19922 provides:

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

28 19. Commission regulation section 12566 (tit. 4, Cal. Code of Regs) provides disciplinary
guidelines for gambling establishments; providing in-part as follows:

(a) If the Commission finds that a gambling establishment is out of
compliance with any mandatory duty specified in or imposed by the Act or
any Commission or Bureau regulation, or any local ordinance which directly
affects the public health, safety, or welfare, which is not otherwise listed in
these disciplinary guidelines, pursuant to Business and Professions Code
section 19922, the penalty shall be one day of suspension, stayed upon the
payment of a penalty, within the guidelines of Business and Professions
Code, sections 19930, subdivision (c), and 19943, subdivision (b), as follows:

1 * * *

2 (2) If the establishment has ten tables or less or has an annual
3 gross gaming revenue over \$10,000, up to and including \$200,000,
4 the penalty shall be between \$100 and \$2000, based upon the factors
5 in mitigation and aggravation.

6 (3) If the establishment has an annual gross gaming revenue
7 over \$200,000, the penalty shall be between \$250 and \$5,000, based
8 upon the factors in mitigation and aggravation.

9 (b) A state gambling license for a gambling establishment granted
10 by the Commission shall be subject to a minimum discipline of suspension
11 for one day of normal business operation and a maximum discipline of
12 suspension for 30 days of normal business operation, which may be stayed
13 on terms and conditions and upon a monetary penalty of twenty-five
14 percent of the average daily gross gaming revenue, not more than \$10,000,
15 but not less than \$300, if the Commission finds that the establishment has
16 violated any of the following but has not been disciplined by the
17 Commission for such a violation previously:

18 (1) Been found, by any administrative tribunal or court in a
19 separate proceeding, to have violated or be in violation of any law
20 involving or relating to gambling, where the penalty imposed was
21 a monetary fine or citation,

22 * * *

23 (12) Violated California Code of Regulations, Title 11,
24 Section 2050, subsection (a) (failure to maintain owner licensee or
25 key employee on premises),

26 * * *

27 (14) Violated California Code of Regulations, Title 11,
28 Section 2070 (unsuitable gaming activities).

29 **FIRST CAUSE FOR DISCIPLINE AND DENIAL OF RENEWAL APPLICATION**
30 **(Respondent's Lack of Requisite Good Character and Integrity—Department of Alcoholic**
31 **Beverage Control Revocation of Respondent's License in Connection with**
32 **Gambling Establishment Actions/Inactions)**

33 20. Complainant incorporates by this reference each and every allegation contained in
34 paragraphs 1 through 19, above, as though set forth here in full.

1 21. On or about May 3, 2010, Respondent's California On-Sale Beer and Wine Public
2 Premises License was revoked, subject to a 180-day stay upon condition that the license be
3 transferred to person and premises acceptable to the Department of Alcoholic Beverage Control,
4 in *In the Matter of the Accusation Against Jose A Cahue Ceasars Club 184 Main St Watsonville,*
5 *CA 95076*, Decision in File: 42-16575, Reg.: 09072208, before the Department of Alcoholic
6 Beverage Control of the State of California ("Decision"). The May 3, 2010 Decision recites that
7 the cause for disciplinary action has been established, in "that respondent(s) [Jose A Cahue]
8 violated or permitted violation of Business & Professions Code Section(s) 25602(a&b) [sells,
9 furnishes, gives, or causes to be sold, any alcoholic beverage to any obviously intoxicated person]
10 and California Penal Code Section(s) 148(a)(1) [willfully resists, delays, or obstructs any public
11 officer in the discharge of his or her duties] and 647(f) [disorderly conduct]." (Decision at p. 1.)

12 22. Respondent Owner's license is subject to discipline and his renewal application is
13 subject to denial pursuant to sections 19920, 19922, 19856 and 19857 in that the May 3, 2010
14 Decision of the Department of Alcoholic Beverage Control established that the conduct of
15 Respondent Owner, directly and/or through his failure to implement reasonable oversight
16 procedures, demonstrate his lack of general character and integrity and pose a threat to the public
17 interest of this state were he allowed to continue to operate the Cardroom.

18 **SECOND CAUSE FOR DISCIPLINE AND DENIAL OF RENEWAL APPLICATION**
19 **(Respondent's Lack of Requisite Good Character and Integrity—Serving Alcohol in**
20 **Gambling Establishment to Obviously Intoxicated Person and Delaying Public**
21 **Officer's Investigation of Associated Death)**

22 23. Complainant incorporates by this reference each and every allegation contained in
23 paragraphs 1 through 19, above, as though set forth here in full.

24 24. Respondent's license is subject to discipline and his renewal application is subject to
25 denial pursuant to sections 19920, 19922, 19856 and 19857, in that in the course of his operation
26 of the Cardroom, on or about March 15, 2009, Respondent Owner, directly and/or through his
27 failure to implement reasonable oversight procedures to prevent such conduct, did the following:

28 A. Served alcohol to an obviously intoxicated person, in violation of Penal Code
 section 25602;

1 B. Was negligent in addressing the serious medical emergency associated with the
2 intoxicated patron, in that proper medical assistance was not timely requested; and

3 C. Delayed or impeded a public officer in the performance of his duties by refusing
4 to translate from English to Spanish and announce to patrons and employees the officer's
5 request for assistance in connection with a then seriously ill patron of Respondent Owner's
6 gambling establishment, in violation of Penal Code section 148, subdivision (a)(1).

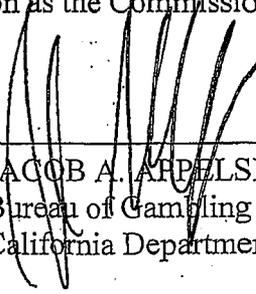
7 **PRAYER**

8 **WHEREFORE**, Complainant prays for relief as set forth herein below.

9 Complainant requests that a hearing be held on the matters herein alleged, and that
10 following the hearing, the Commission issue a decision:

- 11 1. Denying the license renewal application of Respondent Jose Alvarez Cahue;
- 12 2. Imposing a penalty on Respondent Jose Alvarez Cahue under the foregoing applicable
13 statutes and regulations that may include a license suspension or revocation, and/or a monetary
14 fine.
- 15 3. Awarding Complainant, pursuant to subdivisions (d) and (f) of Business and
16 Professions Code section 19930, the costs of investigation and costs of preparation and
17 prosecution of this Accusation and Statement of Issues before the Commission, in a sum
18 according to proof; and
- 19 4. Taking such other and further action as the Commission may deem appropriate.

20
21 Dated: December 16, 2010

22 
23 _____
24 JACOB A. APPELSMITH, Chief
25 Bureau of Gambling Control
26 California Department of Justice

27 Complainant
28