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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:**

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

17 **License Number GEGE-000599**

BGC Case No. SA07-00091-01

OAH No. 2010010608

FIRST AMENDED ACCUSATION

Hearing Date: July 19, 2010

Hearing Time: 9:00 a.m.

Place: Office of Administrative Hearings
2349 Gateway Oaks Drive, 2nd Fl.
Sacramento, CA 95833

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

22 **PARTIES**

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

26
27 ¹ Effective August 24, 2007, Business and Professions code section 19810 was amended
28 to change the designation of the former Division of Gambling Control to Department of Justice,
Bureau of Gambling Control, and it is referred to by the latter designation herein.

1 9. Business and Professions Code section 19930 provides, in relevant part, as follows:

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

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

13 (d) In any case in which the administrative law judge recommends
14 that the commission revoke, suspend, or deny a license, the administrative
15 law judge may, upon presentation of suitable proof, order the licensee or
16 applicant for a license to pay the division the reasonable costs of the
17 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 not
21 adopt a proposed decision and remands the case to the
22 administrative law judge, the administrative law judge may not
23 increase the amount of any costs assessed in the proposed
24 decision.

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

(3) In any judicial action for the recovery of costs,
proof of the commission's decision shall be conclusive proof of
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 division.

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

1 regulations. The violation letter required that the Merced Poker Room respond with regard to the
2 violations, in writing, within fifteen days of receipt of the violation letter.

3 14. On or about October 9, 2007, Maypia Xiong responded, in writing, to the violation
4 letter described in paragraph 13, above, stating that: (1) the owner or key employee (when
5 licensed) would be at the premises at all times when the premises was open to the public; (2) the
6 Merced Poker Room had ceased the unauthorized tournament activity and on September 2, 2007,
7 had submitted an application for approval of that tournament activity to the Bureau of Gambling
8 Control; and, (3) that the owner licensee would operate the gambling establishment according to
9 "the provision and regulation adopted pursuant to this chapter."

10 15. On or about November 14, 2007, Field Representative Judy Rhodes telephoned the
11 Merced Poker Room at approximately 4:10 p.m., and spoke with a Seng Yang who stated that
12 owner Her Xiong was not present at the premises, that games were then in progress, and that he
13 (Seng Yang) was applying for a key employee license. At approximately 5:00 p.m., Rhodes
14 spoke to Her Xiong by telephone and issued a verbal warning that if Bureau staff visited the
15 Merced Poker Room again and found that he (Her Xiong) was not present, the Merced Poker
16 Room would receive another violation letter and might have administrative/disciplinary action
17 taken against its license by the California Gambling Control Commission.

18 16. On or about December 5, 2007, Field Representative Gabriele Taylor and Special
19 Agent Supervisor Donald Van Doorn of the Bureau conducted a site visit at the Merced Poker
20 Room to determine whether corrective actions had been taken in response to the violation letter
21 sent to the Merced Poker Room on September 24, 2007. Taylor and Van Doorn observed that
22 owner Her Xiong was not present at the premises, and that games were in progress. As of
23 December 5, 2007, the Merced Poker Room had no licensed key employee(s).

24 17. Complainant is informed and believes and thereon alleges that the Merced Poker
25 Room's gross revenue for the preceding fiscal year was in excess of \$200,000.00.

26 18. On or about April 30, 2009, Her Xiong failed to submit required reports of financial
27 records to the Bureau of Gambling Control. On or about May 19, 2009, the Bureau sent a "Letter
28 of Warning" to Her Jack Xiong advising him of his failure to submit required financial reports.

1 The Letter of Warning stated that Her Jack Xiong was required to submit the required financial
2 documentation within 15 days from receipt of the letter. Approximately nine months later, on or
3 about March 15, 2010, Xiong complied with the Letter of Warning by submitting required tax
4 documents to the Bureau.

5 **STATUTORY PROVISIONS APPLICABLE TO RESPONDENT**

6 19. The applicable statutory provisions include, but are not limited to, the following.

7 20. Business and Professions Code section 19850 provides:

8 Every person who, either as owner, lessee, or employee, whether for
9 hire or not, either solely or in conjunction with others, deals, operates,
10 carries on, conducts, maintains, or exposes for play any controlled game
11 in this state, or who receives, directly or indirectly, any compensation or
12 reward, or any percentage or share of the money or property played, for
13 keeping, running, or carrying on any controlled game in this state, shall
14 apply for and obtain from the commission, and shall thereafter maintain, a
15 valid state gambling license, key employee license, or work permit, as
16 specified in this chapter. In any criminal prosecution for violation of this
17 section, the punishment shall be as provided in Section 337j of the Penal
18 Code.

19 21. Business and Professions Code section 19853, in relevant part, provides:

20 (a) The commission, by regulation or order, may require that the
21 following persons register with the commission, apply for a finding of
22 suitability as defined in subdivision (i) of 19805, or apply for a gambling
23 license:

24 (1) Any person who furnishes any services or any property to a
25 gambling enterprise under any arrangement whereby that person receives
26 payments based on earnings, profits, or receipts from controlled
27 gambling.

28 (2) Any person who owns an interest in the premises of a licensed
gambling establishment or in real property used by a licensed gambling
establishment.

22. Business and Professions Code section 19854 provides:

(a) Every key employee shall apply for and obtain a key employee
license.

(b) Licenses issued to key employees shall be for specified
positions only, and those positions shall be enumerated in the
endorsement described in subdivision (b) of Section 19851.

(c) No person may be issued a key employee license unless the
person would qualify for a state gambling license.

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23. Business and Professions Code section 19873 provides:

No license may be assigned or transferred either in whole or in part.

24. Business and Professions Code section 19851 provides:

(a) The owner of a gambling enterprise shall apply for and obtain a state gambling license.

(b) Other persons who also obtain a state gambling license, or key employee license, as required by this chapter, shall not receive a separate license certificate, but the license of each such person shall be endorsed on the license that is issued to the owner of the gambling enterprise.

25. Business and Professions Code section 19855, in relevant part, provides:

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

26. Business and Professions Code section 19912, provides as follows:

(a) (1) A person shall not be employed as a gambling enterprise employee, or serve as an independent agent, except as provided in paragraph (2),² 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 pursuant to regulations adopted by the commission for the issuance and renewal of work permits. A work permit issued by the commission shall be valid for two years.

27. California Code of Regulations, title 11, section 2050, in relevant part, provides:

(a) A gambling establishment shall have on the premises, at all times that the establishment is open to the public, an owner licensee or a key employee who shall have the responsibility and authority to ensure immediate compliance with the Act and these regulations.

² Paragraph (2) provides that an independent agent need not hold a work permit if he or she is not a resident of California and has registered with the department in accordance with regulations

1 28. California Code of Regulations, title 11, section 2070, in relevant part, provides:

2 It shall be an unsuitable method of operation for a gambling
3 establishment to:

4 * * *

5 (b) Offer for play any gaming activity which is not authorized by
6 the department pursuant to the Act and these regulations for play at that
7 gambling establishment[.]

8 29. Business and Professions Code section 19922 provides:

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

12 30. California Code of Regulations, title 4, section 12403, in relevant part, provides:

13 A Group III licensee with a gross revenue of less than \$500,000 per
14 year shall prepare financial statements that include, at a minimum, a
15 statement of financial position, and a statement of income or statement
16 of operations. If the licensee is unable to produce the financial
17 statements, it shall do one of the following:

18 1) Engage an independent accountant licensed by the
19 California Board of Accountancy to perform a compilation of the
20 licensee's annual financial statements in accordance with standards
21 for accounting and review services or with currently applicable
22 professional accounting standards and management may elect not to
23 provide footnote disclosures as would otherwise be required by
24 generally accepted accounting principles.

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

FIRST CAUSE FOR DISCIPLINE

31. Complainant incorporates by this reference each and every allegation contained in
32 paragraphs 1 through 30, inclusive, above, as though set forth here in full.

33 32. Respondent is subject to disciplinary action pursuant to Business and Professions
34 Code sections 19823, subdivision (a), 19824, subdivision (d), 19826, subdivision (e), 19930,
35 subdivision (b), 19850, 19853, subdivisions (a) (1) and (2), 19854, 19851, subdivision (a), and

1 regulations adopted pursuant to these provisions, and for violation of Business and Professions
2 Code section 19922, because during the period from February 3, 2006, to approximately
3 February, 2007, Respondent permitted Robert Younan, an unlicensed individual, to own a one-
4 half interest in the Cardroom, and permitted said unlicensed individual to act as a key employee
5 of the Cardroom, and as an employee of the Cardroom.

6 **SECOND CAUSE FOR DISCIPLINE**

7 33. Complainant incorporates by this reference each and every allegation contained in
8 paragraphs 1 through 30, inclusive, above, as though set forth here in full.

9 34. Respondent is subject to disciplinary action pursuant to California Code of
10 Regulations, title 11, section 2050, subdivision (a), and Business and Professions Code section
11 19922, because on no less than two occasions prior to the filing of this Accusation, owner-
12 licensee Xiong operated the Merced Poker Room without being present on the premises or having
13 a licensed key employee present on the premises.

14 **THIRD CAUSE FOR DISCIPLINE**

15 35. Complainant incorporates by this reference each and every allegation contained in
16 paragraphs 1 through 30, inclusive, above, as though set forth here in full.

17 36. Respondent is subject to disciplinary action pursuant to California Code of
18 Regulations, title 11, section 2070, subdivision (b), and Business and Professions Code section
19 19922, because on no less than one occasion prior to the filing of this Accusation, Respondent
20 and the Merced Poker Room have offered for play, and conducted, a Texas-Hold-Em tournament
21 that was not authorized by the Bureau of Gambling Control.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 37. Complainant incorporates by this reference each and every allegation contained in
24 paragraphs 1 through 30, inclusive, above, as though set forth here in full.

25 38. Respondent is subject to disciplinary action pursuant to California Code of
26 Regulations, title 4, section 12403, and Business and Professions Code section 19922, because
27 between the dates of approximately June 10, 2009, and March 15, 2010, Respondent failed
28 furnish required financial records.

1 **PRAYER**

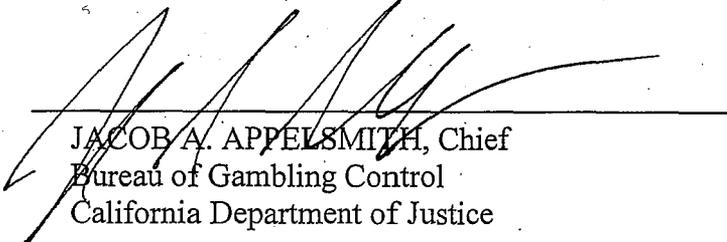
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Commission issue a decision:

4 1. Revoking or suspending the owner's license of Her J. Xiong, sole proprietor of the
5 Merced Poker Room and imposing a fine upon Respondent for each separate violation alleged in
6 paragraphs 31 through 38, above, pursuant to California Code of Regulations, title 4, section
7 12554, and subject to consideration of factors in mitigation and aggravation pursuant to
8 California Code of Regulations, title 4, section 12556.

9 2. Awarding Complainant the costs of investigation and costs of bringing this
10 Accusation before the Commission, pursuant to Business and Professions Code section 19930,
11 subdivisions (d) and (f), in the sum of no less than \$6,500.00, according to proof, and

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

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14 Dated: May 5, 2010



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

17 Complainant
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