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

10 In the Matter of the Statement of Issues and
11 Termination of Provisional License Against:

Case No. S02-01

12 MARK S. LUCIANO
13 Outpost Casino Sports Bar and Restaurant
2251 San Ramon Valley Drive
14 San Ramon, CA 94583

**STATEMENT OF ISSUES AND
TERMINATION OF PROVISIONAL
LICENSE**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Harlan W. Goodson ("Complainant") makes and files this Statement of
20 Issues and Termination of Provisional License in his official capacity as Director, Division of
21 Gambling Control, Department of Justice, State of California..

22 LICENSE HISTORY

23 2. On February 14, 1996, Mark Steven Luciano, (hereinafter "Respondent"),
24 filed an initial application with the Office of Gaming Registration for a gaming registration to
25 own and operate the Outpost Casino Sports Bar and Restaurant, 2251 San Ramon Valley Drive,
26 San Ramon, CA 94583, as a sole proprietorship. The gambling establishment consisted of ten
27 tables.

1 On August 15, 1996, Respondent withdrew his application for registration.
2 On September 9, 1996, Respondent submitted a new application for a gaming
3 registration.
4 On October 2, 1996, an initial Conditional Registration Certificate (CRC)¹ was
5 issued to Respondent by the Office of Gaming Registration.
6 On August 1, 1997, Respondent filed a subsequent initial application for gaming
7 registration.
8 On October 1, 1997, a CRC was issued by the Office of Gaming Registration.
9 On January 1, 1998, Respondent was deemed to hold a temporary Provisional
10 License valid through December 31, 1998. This temporary Provisional License did not confer a
11 property right and was limited to a specific time period.²
12 On January 1, 1998, the Gambling Control Act became effective. This
13 authorized the Division of Gambling Control, and the Gambling Control Board to regulate
14 gambling in California. Business and Professions Code section 19800 *et. seq.*
15 On December 31, 1998, the temporary Provisional License issued to Respondent
16 was extended through December 31, 1999.
17 On February 3, 1999, Respondent submitted an application for a state gambling
18 license (SGL) to the Division of Gambling Control, Department of Justice, State of California.
19 On December 31, 1999, the temporary Provisional License issued to Respondent
20 was extended through December 31, 2000.
21 On August 17, 2000, the Division of Gambling Control, Department of Justice,
22 advised Respondent that his application for a state gambling license would be denied.

23
24 1. The Attorney General was authorized to issue a CRC pending an investigation of the
25 applicant's background. (Bus. & Prof. Code, § 19807(c).)

26 2. The new law, in uncodified provisions, provides that a holder of a valid registration
27 (including a CRC) was deemed to hold a Provisional License pending a determination on an
28 application for a gambling license. (Section 62(b)(1) of Stats. 1997, c. 867 (S.B.8). The
"issuance of a provisional license creates no vested right to the issuance of a state gambling
license" under the Gambling Control Act. (Section 62 (a) of Stats. 1997, c 867 (S.B. 8).

1 On October 20, 2000, the Division of Gambling Control, Department of Justice,
2 notified Respondent that the California Attorney General, after review, upheld the
3 recommendation to deny Respondent's application for a state gambling license.

4 On November 14, 2000, Respondent was served with a Cease and Desist Order
5 filed by the Division of Gambling Control, Department of Justice.

6 On November 17, 2000, the Division of Gambling Control, Department of Justice,
7 notified Respondent that his temporary Provisional License was terminated.

8 On January 1, 2001, the Division of Gambling Control, Department of Justice,
9 issued Respondent a temporary Provisional License through December 31, 2001. He was
10 allowed to operate the Outpost Casino pending litigation in Sacramento Superior Court, entitled
11 *Mark S. Luciano v. Department of Justice, Division of Gambling Control.*

12 On February 20, 2001, the Division of Gambling Control's denial of
13 Respondent's application was stayed by Sacramento County Superior Court, Judge L. Connelly.

14 On July 17, 2001, the Division of Gambling Control advised Respondent that his
15 application would be denied. A pre-denial hearing was scheduled.

16 On September 26, 2001, the pre-denial hearing was conducted.

17 On October 4, 2001, the Division of Gambling Control, Department of Justice,
18 issued a recommendation to the California Gambling Control Commission to deny to
19 Respondent a gambling license.

20 On December 19, 2001, the Division of Gambling Control, Department of Justice,
21 extended Respondent's temporary Provisional License through December 31, 2002, pending a
22 resolution of his gambling license application. Prior to this time, there has never been a
23 complete background investigation on Respondent's application for a CRC or a determination
24 that Respondent is suitable to hold a gambling license.

25 STATUTORY PROVISIONS

26 3. Business and Professions Code section 19848A, subdivision (a) and (b)
27 provides:
28

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

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

4 "(b) A person whose prior activities, criminal record, if
5 any, reputation, habits, and associations do not pose a threat to the
6 public interest of this state, or to the effective regulation and
7 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."

8 4. Business and Professions Code section 19850 provides:

9 "(a) The commission shall deny a license to any applicant who
10 is disqualified for any of the following reasons:

11 "(1) Failure of the applicant to clearly establish eligibility and
12 qualification in accordance with this chapter.

13 "(2) Failure of the applicant to provide information,
14 documentation, and assurances required by this chapter or
15 requested by the director, or failure of the applicant to
16 reveal any fact material to qualification or the supplying of
17 information that is untrue or misleading as to a material fact
18 pertaining to the qualification criteria."

19 5. Business and Professions Code section 19854A provides:

20 "(a) An applicant for licensing or for any approval or
21 consent required by this chapter, shall make full and true disclosure
22 of all information to the division and the commission as necessary
23 to carry out the policies of this state relating to licensing,
24 registration, and control of gambling.

25 6. Business and Professions Code section 19910.5A provides:

26 "(a)(1) A person shall not be employed as a gambling
27 enterprise employee, or serve as an independent agent, except as
28 provided in paragraph (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 hers duties are performed."

7. Business and Professions Code section 19917 provides:

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

8. California Code of Regulations, Title 11, section 2050, subdivision (a)

1 provides:

2 "A gambling establishment shall have on the premises, at
3 all times that the establishment is open to the public, an owner
4 licensee or a key employee who shall have the responsibility and
5 authority to ensure immediate compliance with the [Gambling
6 Control] Act and the regulations."

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10 9. Penal Code section 319 provides:

11 "A lottery is any scheme for the disposal or distribution of
12 property by chance, among persons who have paid or promised to
13 pay any valuable consideration for the chance of obtaining such
14 property or a portion of it, or for any share or any interest in such
15 property, upon any agreement, understanding, or expectation that it
16 is to be distributed or disposed of by lot or chance, whether called
17 a lottery, raffle, or gift enterprise, or by whatever name the same
18 may be known."

19
20 10. Penal Code section 320 provides:

21 "Every person who contrives, prepares, sets up, proposes,
22 or draws a lottery, is guilty of a misdemeanor."

23 11. Penal Code section 330 provides:

24 "Every person who deals, plays, or carries on, opens, or
25 causes to be opened, or who conducts, either as an owner or
26 employee, whether for hire or not . . . any banking or percentage
27 game . . . is guilty of a misdemeanor . . ."

28 12. San Ramon City Ordinance section B1-7B provides:

"No person who has or should have a cardroom license
shall allow any other person to commit acts contrary to subsection
C of this section or Section B1-32D."

13. San Ramon City Ordinance section B1-32F provides:

"No licensee, owner, manager, or employee or any other
person associated with, employed by, or acting as agent for, any
cardroom licensed by this chapter, will engage in lending of
money, chips, tokens or anything of value, either real or promised,
to any customer, player or any person for the purpose of allowing
that person to eat, drink or play cards within said cardroom."

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1 VIOLATIONS

2 I.

3 FIRST CAUSE FOR DENIAL OF APPLICATION AND TERMINATION

4 OF PROVISIONAL LICENSE

5 NO CREDIT ALLOWED

6 14. Respondent, as part of his business operation, routinely extended credit to
7 Outpost Casino patrons. As of March 19, 2000, Respondent had extended credit to over 130
8 casino customers in an amount exceeding \$100,000. The duties of the General Manager of the
9 casino, as listed in the business records, include "assist . . . credit and all operational issues of
10 the business." As of March 25, 2000, Respondent had extended \$152,585 in outstanding credit
11 issued to casino patrons. Respondent extended credit to casino patrons in violation of San
12 Ramon Ordinance section B1-32F.

13 II.

14 SECOND CAUSE FOR DENIAL OF APPLICATION AND TERMINATION

15 OF PROVISIONAL LICENSE

16 CARDROOM EMPLOYEE WITHOUT VALID WORK PERMIT

17 15. During the period February - March 2000, Hai Huynh was employed at the
18 Outpost Casino, Asian-California game section, without a work permit from the San Ramon
19 Police Department as required by Business and Professions Code section 19910.5A, and San
20 Ramon Ordinance section B1-7B.

21 III.

22 THIRD CAUSE FOR DENIAL OF APPLICATION AND TERMINATION

23 OF PROVISIONAL LICENSE

24 PENAL CODE SECTION 319 - ILLEGAL LOTTERY

25 16. On February 29, 2000, Respondent submitted a belated bi-annual gaming
26 activity report for the Outpost Casino. The report was due January 1, 2000. The report
27 contained a description of gaming activities conducted at the Outpost Casino during the previous
28

1 six months. Included in the report were Outpost Casino games of Double Hand Poker "Rolex
2 Giveaway;" an Omaha "Bad Beat Jackpot;" and a Hold'em "Bad Beat Jackpot." On February
3 18, 2000, the Outpost Casino used a banner advertising the Hold'em "Bad Beat Jackpot" game.
4 Respondent represented in the report that he has played a "Rolex Giveaway" game. A Rolex
5 watch is awarded to the player who "has the most points at the end of four hours;" and players
6 who pay the "standard collection rates" received hands. This game constituted an illegal lottery.

7 17. A lottery has three elements: prize, consideration, and chance. The "Rolex
8 Giveaway," Omaha "Bad Beat Jackpot" and Hold'em "Bad Beat Jackpot" games are each illegal
9 lotteries. Respondent violated Penal Code section 320, when Respondent contrived, prepared,
10 set up, proposed or drew a lottery at the Outpost Casino. Regardless of the player's skill level,
11 chance determines whether a player holds the losing hand that wins the "Bad Beat Jackpot." The
12 "Rolex Giveaway," Omaha and Hold'em "Bad Beat" jackpot games conducted at the Outpost
13 Casino are each illegal lotteries in violation of Penal Code section 320.

14 IV.

15 FOURTH CAUSE FOR DENIAL OF APPLICATION AND TERMINATION
16 OF PROVISIONAL LICENSE
17 BANKED GAMES³

18 18. On June 3, 1999, Respondent was advised by Division agents that banked
19 games were prohibited by Penal Code section 330. Respondent was also informed that he
20 personally could not bank games.

21 19. On or about February 18, 2000, Respondent while at the Outpost Casino,
22 played in the Pai Gow Poker game as a player, a player banker, and as a backline banker where
23 he financially backed another player in the banker position at the table with whom he split the
24 winnings and losses. This conduct constituted a banked game in violation of Penal Code section
25

26 3. "Those games in which there is a person or entity that participates in the action as 'the
27 one against the many,' 'taking on all comers, paying all winners, and collecting from all losers,'
28 doing so through a fund generally called the bank." (*Hotel Employees and Restaurant
Employees International Union v. Gray Davis* (1999) 21 Cal.4th 585, 592.)

1 330.

2 20. On March 1, 2000, at the Outpost Casino, Respondent banked blackjack
3 games. Respondent banked numerous blackjack hands in violation of Penal Code section 330.

4 21. On March 9, 2000, Respondent played and banked the Pai Gow Poker
5 game at the Outpost Casino. This conduct constituted a banked game in violation of Penal Code
6 section 330.

7 22. On March 14, 2000, Respondent played and banked in the Pai Gow Poker
8 games at the Outpost Casino. This conduct constituted a banked game in violation of Penal Code
9 section 330.

10 V.

11 FIFTH CAUSE FOR DENIAL OF APPLICATION AND TERMINATION
12 OF PROVISIONAL LICENSE

13 FAILURE TO MAKE FULL AND TRUE DISCLOSURE

14 23. FALSE STATEMENT REGARDING EMPLOYMENT OF HAI HUYNH

15 In a March 17, 2000, interview with Division agents, Respondent failed to make a
16 full and true disclosure regarding the employment of Hai Huynh. Respondent falsely represented
17 that Hai Huynh did not work at the Outpost Casino. Respondent falsely represented that Hai
18 Huynh simply "comes in quite often," but does not work at the casino. In fact, Hai Huynh
19 operated the Asian-California game room at the Outpost Casino. He worked as a key employee
20 at the Outpost Casino. Respondent failed to make a full and true disclosure regarding the
21 employment of Hai Huynh in violation of Business and Professions Code section 19854A,
22 subdivision (a).

23 24. EMPLOYEE - PROP PLAYER HIRING PRACTICES

24 On March 17, 2000, in an interview with Division of Gambling Control agents,
25 Respondent falsely represented that "prop players⁴ were only used in poker games; prop players

26 _____
27 4. "Prop player" is a term of art, unique to California which denotes a person hired or
28 employed by the gambling establishment to participate in a game in order to promote the game
or to have sufficient players to conduct a game.

1 clock in and out on the time clock like other Outpost Casino employees; and that they are paid
2 through regular payroll.” Respondent also falsely represented that Outpost casino employee
3 Sonny Nguyen, was the Manager of the Asian-California games but does “not hire or fire
4 employees.” Respondent represented that he and Sonny Nguyen together interviewed all
5 prospective employees. In fact, the employee prop players are not paid through regular payroll.
6 Prop players are involved in other games at the Outpost Casino. Sonny Nguyen interviews and
7 hires employees without Respondent. Respondent failed to make full and true disclosures
8 regarding prop players and the authority of Sonny Nguyen to hire employees at the Outpost
9 Casino. These false statements violated Business and Professions Code section 19854A,
10 subdivision (a).

11 25. BANK GAMES

12 In an March 17, 2000, interview with Division of Gambling Control agents,
13 Respondent falsely represented that all losses from his personal play at the Outpost Casino card
14 tables are made up from his personal account “monthly.” In fact, Respondent wrote off his
15 personal gaming losses as a “promotional expense.” Respondent failed to make full and true
16 disclosures regarding how his gambling losses were handled at the Outpost Casino in violation of
17 Business and Professions Code section 19854A, subdivision (a), in that Respondent did not make
18 up his losses from personal play. Respondent attempted to conceal that he engaged in illegal
19 banked games. Bank games were conducted at the Outpost Casino in violation of Penal Code
20 section 330.

21 26. GAMING ACTIVITY REPORT

22 On a Gaming Activity Report submitted by Respondent on February 29, 2000, is
23 a drawing held on February 20, 2000, for a 1999 Jeep Wrangler. Respondent represented that
24 “no purchase (is) necessary to be eligible to win the Jeep.” This was a false statement. Only
25 paying players were eligible for the Jeep drawing. Respondent failed to make a full and true
26 disclosure that a purchase was necessary for the drawing in violation of Business and Professions
27 Code section 19854A, subdivision (a). The Jeep Wrangler giveaway was a lottery prohibited by
28

1 Penal Code section 319 and 320.

2 27. EMPLOYEE LIST

3 On February 29, 2000, Respondent submitted to the Division of Gambling
4 Control, Department of Justice, a complete list of all Outpost Casino employees. Respondent
5 failed to list Sonny Nguyen or Hai Huynh as employees. Respondent failed to make a full and
6 true disclosure regarding the employment of Sonny Nguyen and Hai Huynh in violation of
7 Business and Professions Code section 19854A, subdivision (a).

8 28. Furthermore, on the Outpost Casino Key Employee Report and Employee
9 Roster dated September 17, 2001, Respondent failed to list Sonny Nguyen as an employee. Yet
10 in promotional materials the Outpost Casino advertised "Double Hand Poker," dated December
11 2, 2001, with the contact person listed as "Sonny Nguyen (408) 439-1654." Respondent failed to
12 make a full and true disclosure regarding the employment of Sonny Nguyen in violation of
13 Business and Professions Code section 19854A, subdivision (a).

14 29. LITIGATION HISTORY

15 On an application filed on February 2, 1999, Respondent represented in the
16 litigation history section that he had not "been a party to a lawsuit as either a plaintiff or
17 defendant." This was a false statement. Respondent was the plaintiff in an action entitled,
18 *Luciano v. Schireck*, Superior Court, Contra Costa County, Case No. C98-03569, filed August
19 20, 1998. Respondent failed to make a full and true disclosure regarding his litigation history in
20 violation of Business and Professions Code section 19854A, subdivision (a).

21 VI.

22 SIXTH CAUSE OF FOR DENIAL OF APPLICATION AND TERMINATION
23 OF PROVISIONAL LICENSE
24 COMPLIANCE WITH LOCAL ORDINANCE

25 30. Respondent violated Business and Professions Code section 19917 by
26 operating the Outpost Casino in violation of the San Ramon City Ordinance as outlined herein.
27 Respondent granted credit to Outpost Casino patrons in violation of San Ramon Ordinance B1-
28 32F.

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VII.

SEVENTH CAUSE FOR DENIAL OF APPLICATION AND
TERMINATION OF PROVISIONAL LICENSE
REGULATION VIOLATION

31. California Code of Regulations, Title 11, section 2050, subdivision (a) requires that 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 Gambling Control Act and regulations. On March 23, 2000, the Outpost Casino was open for business without an owner licensee or key employee present in the casino. The absence of an owner licensee or key employee on March 23, 2000, violates California Code of Regulations, Title 11, Section 2050, subdivision (a).


PRAYER

WHEREFORE, Complainant request that a hearing be held on the matters alleged herein, and that following the hearing, the California Gambling Control Commission issue a decision:

1. Deny the application of Mark S. Luciano for a California Gambling License.
2. Deny the application of Mark S. Luciano for a Gambling License to operate the Outpost Casino, 2251 San Ramon Valley Drive, San Ramon, CA 94583.
3. Terminate the temporary Provisional License to operate the OUTPOST CASINO.
4. Taking such other and further action as deemed necessary and proper.

DATED: 3/17/, 2002.

for


 HARLAN W. GOODSON
 DIRECTOR
 DIVISION OF GAMBLING CONTROL
 STATE OF CALIFORNIA

COMPLAINANT