XAVIER BECERRA
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
WILLIAM P. TORNGREN
Deputy Attorney General
State Bar No. 58493
PARAS HRISHIKESH MODHA
Deputy Attorney General
State Bar No. 215761
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7777
Fax: (916) 327-2319
E-mail: Paras.Modha@doj.ca.gov
Attorneys for Complainant

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BEFORE THE

CALIFORNIA GAMBLING CONTROL COMMISSION

STATE OF CALIFORNIA

In the Matter of the Application for Approval of Initial State Gambling Licenses for: **KRIS KAT, LLC** P.O. Box 927 Sacramento, CA 95812 and **STEVEN CARL AYERS** P.O. Box 3011 Sacramento, CA 95812 Respondents.	**CGCC Case No. CGCC-2018-0111-5A** **BGC Case No. BGC- HQ2018-00008SL** **STATEMENT OF REASONS**

Complainant alleges as follows:

PARTIES

1. Stephanie Shimazu (Complainant) brings this Statement of Reasons solely in her official capacity as the Director of the California Department of Justice, Bureau of Gambling Control (Bureau).

2. In January of 2017, the Bureau received an initial Application for State Gambling License and Supplemental Background Investigation Information, with attached schedules, from Kris Kat, LLC.

3. In January of 2017, the Bureau received an initial Application for State Gambling License and Supplemental Background Investigation Information (Application), with attached schedules, from Kris Kat, LLC's sole member, Steven Carl Ayers (Respondent).[1]

4. On January 11, 2018, the California Gambling Control Commission (Commission) considered Kris Kat, LLC and Respondent's applications (collectively, Applications) and referred the matter to an evidentiary hearing pursuant to California Code of Regulations, title 4, section 12054, subdivision (a)(2).

5. Respondent and Kris Kat, LLC submitted a Notice of Defense, dated January 24, 2018.

JURISDICTION

6. The Commission has jurisdiction over the operation and concentration of gambling establishments and all persons and things having to do with the operation of gambling establishments. (Bus. & Prof. Code, § 19811, subd. (b).)[2] The Commission's responsibilities include assuring that licenses are not issued to unqualified or disqualified persons and that no unqualified or disqualified person is materially involved with a licensed gambling operation. (Bus. & Prof. Code, § 19823, subd. (a).) The Commission has all powers necessary and proper to carry out the Gambling Control Act's policies and purposes, including the powers to deny any application for a license and to take actions to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities. (Bus. & Prof. Code, § 19824, subds. (b) & (d).)

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[1] Pursuant to Business and Professions Code section 19852, subdivisions (f), Kris Kat, LLC is not eligible to receive a state gambling license unless Respondent obtains a state gambling license.

[2] The statutes and regulations applicable to this Statement of Reasons are quoted in pertinent part in Appendix A.

BURDEN OF PROOF

7. Respondent and Kris Kat, LLC have the burden of proving they are qualified to receive a state gambling license. (Bus. & Prof. Code, § 19856, subd. (a).)

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unqualified for Licensure– Association with Entity Convicted of Felony)

8. The Applications are subject to denial[3] in that on or about April 2, 1990, an entity wholly controlled and owned by Respondent plead guilty to violating Title 18 United States Code section 287, presenting a false claim, a felony, in the case of *United States of America v. Carl Corporation, a Nevada Corporation* (D. Nev. 1989, No. CR-S 89-236-LDG). The record of conviction in that case, and the record in the related case of *United States of America v. Steven Ayers, et al.* (D. Nev. 1988, No. CR-S-88-187-LDG-RJJ) demonstrates that the Respondent is the alter ego[4] of Carl Corporation, and is therefore liable for its conduct.

(Bus. & Prof. Code, §§ 19856, 19857; Cal. Code. Regs., tit. 4, §§ 12346, subds. (a)(1), (b)(3)(A), & (c), & 12568, subds. (c)(3) & (c)(4).)

SECOND CAUSE FOR DENIAL OF APPLICATION

(Unqualified for Licensure–Criminal Convictions)

9. The Applications are subject to denial[5] in that Respondent is not a person of good character, honesty, and integrity. His prior activities and his pattern of disregard for the law demonstrate that he poses a threat to the public interest of this state, or to the effective regulation and control of controlled gambling. His prior activities and his pattern of disregard for the law

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[3] Respondent's application is subject to mandatory denial if Respondent is found to be unqualified or disqualified for licensure under any of the criteria found in Business and Professions Code sections 19857, subdivisions (a) or (b), or 19859. (Cal. Code. Regs., tit. 4, § 12346, subd. (a)(1); see also, Bus. & Prof. Code, § 19823, Cal. Code. Regs., tit. 4, § 12568, subds. (c)(3) & (c)(4).)

[4] See *Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th. 980, 995 ["Under the alter ego doctrine . . . where a corporation is used by an individual . . . to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation."].

[5] See footnote 3, *supra*.

demonstrate that he creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling. This includes, without limitation, the following:

a. On or about June 28, 2017, Respondent was convicted of violating Penal Code section 415, subdivision (1), fighting in public, a misdemeanor, in the case of *People v. Steven Carl Ayers* (Super. Ct. Yolo, 2017, CRM 17-2738).

b. On or about April 15, 2013, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with 0.08 percent or more, by weight, of alcohol, a misdemeanor, in the case of *People v. Steven Carl Ayers* (Super. Ct. Yolo, 2011, CRM 11-5205).

c. On or about April 15, 2013, Respondent was also convicted of violating Vehicle Code section 23152, subdivision (b), driving with 0.08 percent or more, by weight, of alcohol, with enhancement for excessive blood alcohol or refusal to take chemical test, a misdemeanor, in the case of *People v. Steven Carl Ayers* (Super. Ct. Yolo, 2013, CR 13-611).

d. On or about April 2, 1990, Respondent on behalf of Carl Corporation, an entity wholly controlled and owned by Respondent, plead guilty to violating Title 18 United States Code section 287, presenting a false claim, a felony, in the case of *United States of America v. Carl Corporation, a Nevada Corporation* (D. Nev. 1989, No. CR-S 89-236-LDG).

e. Respondent, under penalty of perjury, admitted in his Application that approximately 25 years ago, he "was found guilty" of a misdemeanor in the San Diego area, related to a pistol found in the vehicle he was driving from Mexico to the United States of America.[6]

f. Respondent, under penalty of perjury, admitted in his Application that approximately 30 years ago he "pled no contest" to a charge in Las Vegas, Nevada related to "high speed."

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[6] Due to the age of the conviction, the Bureau was unable to obtain any records for this conviction.

g. Respondent, under penalty of perjury, admitted that approximately 30 years ago, he was arrested for allegations involving two businesses: (1) "Continental Construction Company"—"involved alleged improper billings/invoices on construction projects"; and (2) "Nevada Steel Corporation"—"allegations centered around employees' wages".

(Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b); Cal. Code. Regs., tit. 4, §§ 12346, subds. (a)(1), (b)(3)(A), & (c), & 12568, subds. (c)(3) & (c)(4).)

THIRD CAUSE FOR DENIAL OF APPLICATION

(Misdemeanor Involving Moral Turpitude)

10. The Applications are subject to denial in that within 10 years prior to the submission of his Application, Respondent was convicted of a misdemeanor which by the manner of its commission involved moral turpitude.[7] On or about June 28, 2017, Respondent was convicted of violating Penal Code section 415, subdivision (1), fighting in public, a misdemeanor, in the case of *People v. Steven Carl Ayers* (Super. Ct. Yolo, 2017, CRM 17-2738). On or about April 14, 2017, Respondent injured his wife, prevented her from leaving the scene of the altercation, and falsified injuries to himself in order to deflect blame for his conduct onto his wife. Based on this incident, on May 31, 2017, Respondent was charged in Yolo County Superior Court with one count of violating Penal Code section 273.5, subdivision (a), infliction of corporal injury on spouse, a felony. Through plea bargaining, the felony charge was reduced to a violation of Penal Code section 415, subdivision (1).

(Bus. & Prof. Code, §§ 198596, subd. (d); Cal. Code. Regs., tit. 4, §§ 12346, subds. (a)(1) & 12568, subd. (c)(4).)

PRAYER

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

1. Denying Kris Kat, LLC and Steven Carl Ayers' Applications; and

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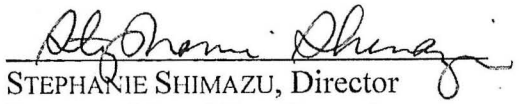
[7] In determining whether an offense involves moral turpitude an administrative body is not limited to considering the least adjudicated elements of the offense. The threat to the public interest "is not diminished by the consideration that others could violate the same criminal statute without moral turpitude. (*Padilla v. State Personnel Board* (1992) 8 Cal.App.4th 1136, 1141.)

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

Dated: August 8, 2018



STEPHANIE SHIMAZU, Director
Bureau of Gambling Control
California Department of Justice
Complainant

APPENDIX A – STATUTORY AND REGULATORY PROVISIONS

Jurisdictional Provisions

1. Business and Professions Code sections 19805, subdivision (j) provides:

> (j) "Finding of suitability" means a finding that a person meets the qualification criteria described in subdivisions (a) and (b) of Section 19857, and that the person would not be disqualified from holding a state gambling license on any of the grounds specified in Section 19859.

2. Business and Professions Code section 19811 provides, in part:

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

3. Business and Professions Code section 19823 provides:

> (a) The responsibilities of the commission include, without limitation, all of the following:
>
> > (1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.
> >
> > (2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.
>
> (b) For the purposes of this section, "unqualified person" means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and "disqualified person" means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

4. Business and Professions Code section 19824 provides, in part:

> 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, . . . limit, condition, or restrict any license, permit, or approval, or impose any fine

upon any person licensed or approved. The commission may condition, restrict, discipline, or take action against the license of an individual owner endorsed on the license certificate of the gambling enterprise whether or not the commission takes action against the license of the gambling enterprise.

[¶] . . . [¶]

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

5. Business and Professions Code section 19826 provides, in part:

The department[8] . . . shall have all of the following responsibilities:

(a) To receive and process applications for any license, permit, or other approval, and to collect all related fees. The department shall investigate the qualifications of applicants before any license, permit, or other approval is issued, and investigate any request to the commission for any approval that may be required pursuant to this chapter. The department may recommend the denial or limitation, conditioning, or restriction on any license, permit, or other approval.

Specific Statutory and Regulatory Provisions

6. Business and Professions Code, section 19801 provides, in part:

(h) Public trust and confidence can only be maintained by strict comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments and the manufacture and distribution of permissible gambling equipment.

(i) All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.

[¶] . . . [¶]

(k) In order to effectuate state policy as declared herein, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or

[8] "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments . . . . Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder.

7. Business and Professions Code section 19850 provides, in part:

Every person . . . who receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, or carrying on any controlled game in this state, shall apply for and obtain from the commission, and shall thereafter maintain, a valid state gambling license, key employee license, or work permit . . . . In any criminal prosecution for violation of this section, the punishment shall be as provided in Section 337j of the Penal Code.

8. Business and Profession Code section 19851 provides:

(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.

9. Business and Professions Code section 19852 provides, in part:

Except as provided in Section 19852.2, an owner of a gambling enterprise that is not a natural person shall not be eligible for a state gambling license unless each of the following persons individually applies for and obtains a state gambling license:

(f) If the owner is a limited liability company, every officer, manager, member, or owner.

10. Business and Professions Code section 19856 provides:

(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.

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

(c) In reviewing an application for any license, the commission shall consider whether issuance of the license is inimical to public health, safety, and welfare, and whether issuance of the license will undermine public trust that the gambling operations with respect to which the license would be

issued are free from criminal and dishonest elements and would be conducted honestly.

11. Business and Professions Code section 19857 provides:

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

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

(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.

12. Business and Professions Code section 19859 provides, in part:

The commission shall deny a license to any applicant who is disqualified for any of the following reasons:

(a) Failure of the applicant to clearly establish eligibility and qualification in accordance with this chapter.

(b) Failure of the applicant to provide information, documentation, and assurances required by the Chief, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(c)(1) Except as provided in paragraph (2), conviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.

(2) A conviction of a felony for the possession of cannabis, the facts of which would not constitute a felony or misdemeanor under California law on the date the application for a license is submitted, shall not constitute a basis to deny a license pursuant to this section.

(d) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not constitute a

limitation on the discretion of the commission under Section 19856 or affect the applicant's burden under Section 19857.

13. Business and Professions Code section 19866 provides:

An applicant for licensing or for any approval or consent required by this chapter, shall make full and true disclosure of all information to the department and the commission as necessary to carry out the policies of this state relating to licensing, registration, and control of gambling.

14. California Code of Regulations, title 4, section 12054, subdivision (a), provides:

(a) At a non-evidentiary hearing meeting, the Commission may take, but is not limited to taking, one of the following actions:

(1) Issue a license, temporary license, interim license, registration, permit, finding of suitability, renewal or other approval.

(2) Elect to hold an evidentiary hearing in accordance with Section 12056 and, when for a renewal application, issue an interim renewal license pursuant to Section 12035. The Commission shall identify those issues for which it requires additional information or consideration related to the applicant's suitability.

(3) Table or continue an item for consideration at a subsequent meeting, for any purpose, including obtaining new or additional information from the applicant, Bureau or Commission staff, provided however in the case of renewals, the Commission must act on the application before the license expires.

(4) Extend a license for up to 180 calendar days as necessary, as provided in Business and Professions Code section 19876, subdivision (c).

(5) Approve or deny a request for withdrawal pursuant to Section 12015.

(6) Make a finding of abandonment pursuant to subsection (c) of Section 12017.

(7) If the Bureau has filed an accusatory pleading with the Commission pursuant to Business and Professions Code section 19930 prior to Commission action on a renewal application, the Commission shall issue an interim renewal license pursuant to Section 12035.

15. California Code of Regulations, title 4, section 12346, provides, in part:

> (a) An application for a gambling license shall be denied by the Commission if any of the following apply:
>
> > (1) The Commission finds that the applicant is ineligible, unqualified, disqualified, or unsuitable pursuant to the criteria set forth in the Act[9] or other applicable law or that granting the license would be inimical to public health, safety, welfare, or would undermine the public trust that gambling operations are free from criminal and dishonest elements.
>
> (b) An application for a gambling license may be denied if:
>
> > (3) The Commission finds that the applicant's past behavior calls into question the applicant's qualification requirements and considerations outlined in Business and Professions Code section 19856. Examples of past behavior that may be considered include, but are not limited to:
> >
> > > (A) Convictions which demonstrate a pattern of disregard for the law.

16. California Code of Regulations, title 4, section 12568, subds. (c)(3) and (c)(4), provide:

> (c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:
>
> * * *
>
> > (3) If the Commission finds the holder no longer meets any criterion for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions Code sections 19857, 19858, or 19880, as applicable, or
> >
> > (4) If the Commission finds the holder currently meets any of the criteria for mandatory denial of an application set forth in Business and Professions Code sections 19859 or 19860.

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[9] "Act" refers to the Gambling Control Act, Business and Professions Code, section 19800, et seq.).