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

13  
14 **In the Matter of the Statement of Reasons**  
15 **for Denial of Application for Renewal of**  
16 **State Gambling License for:**

17 **TERRY VARGAS, Sole Proprietor,**  
18 **d.b.a.: POKER FLATS CASINO**  
19 **463 West Main Street**  
**Merced, California 95340**

20 **LICENSE NUMBER GEGE-001276**

21 **Respondent.**

**BGC Case No. HQ2017-00012SL**

**CGCC Case No.: CGCC-2017-0727-9D**

**STATEMENT OF REASONS**

1 Complainant alleges as follows:

2 **PARTIES**

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

6 2. On or about October 4, 2016, Terry Vargas (Respondent), doing business as Poker  
7 Flats Casino, submitted an Application for State Gambling License (Application) to the Bureau  
8 for renewal of her license.

9 3. On or about December 16, 2016, the Bureau submitted a 2016 Renewal Investigation  
10 Report for Poker Flats Casino to the California Gambling Control Commission (Commission).  
11 On or about June 19, 2017, the Bureau submitted to the Commission an Addendum to that report  
12 detailing Respondent's lack of compliance.

13 4. At its July 27, 2017 meeting, the Commission considered the Application and issued  
14 an interim renewal license valid through July 31, 2019, subject to four conditions that are listed  
15 on the license. The conditions were carried over from the previous interim renewal license,  
16 effective from February 1, 2017 to July 31, 2017.

17 5. Also at its July 27, 2017 meeting, the Commission referred consideration of the  
18 application for license renewal to an evidentiary hearing.

19 6. Respondent submitted a completed Notice of Defense form that was dated August 15,  
20 2017, but that was not received by the Bureau until September 7, 2017.<sup>1</sup>

21 7. On or about October 5, 2017, the Commission's Executive Director set the matter for  
22 a hearing to be conducted pursuant to the provisions of Business and Professions Code sections  
23 19870 and 19871, and California Code of Regulations, title 4, section 12056, subdivision (a).<sup>2</sup>

24  
25 <sup>1</sup> It appears that Respondent's completed Notice of Defense form was submitted after the  
26 requisite due date specified on the Notice of Defense form. However, the Bureau is not seeking  
the denial of Respondent's Application by way of a default.

27 <sup>2</sup> The statutes and regulations applicable to this Statement of Reasons are quoted in  
28 pertinent part in Appendix A.

1 **BURDEN OF PROOF**

2 8. Respondent has the burden of proving her qualifications to receive a license.  
3 (Bus. & Prof. Code, § 19856, subd. (a).)

4 **FIRST CAUSE FOR DENIAL**

5 **(Failure to Comply with Terms and Conditions of Licensure)**

6 9. Respondent's Application is subject to denial and her interim renewal license is  
7 subject to cancellation because she violated conditions placed upon her licensure. Respondent's  
8 interim renewal license was issued upon four conditions intended to ensure her compliance with  
9 financial recordkeeping, reporting, and licensing requirements. Respondent has failed to comply  
10 with two of the conditions placed upon her license, as follows:

11 a. Respondent has failed to comply with condition number one. That condition  
12 requires that Respondent "request a letter from the Bureau confirming that the Bureau has  
13 received all documents required to be provided to it by [Respondent's] 2014 license conditions  
14 and stating which documents, if any, have not been provided." Condition number one further  
15 requires that Respondent "provide any outstanding documents to the Bureau within 60 days of  
16 receipt of the Bureau's letter" and allows for an extension if provided in writing by the Bureau.  
17 Respondent requested the confirmation letter from the Bureau. The Bureau responded with a  
18 letter detailing the information and documentation that was still required. Respondent failed to  
19 provide all of the documents to the Bureau by the requisite date. To date, Respondent has failed  
20 to provide all of the required documentation.

21 b. Respondent has failed to comply with condition number four. That condition  
22 requires that on a quarterly basis, starting with the quarter ending on March 31, 2017, Respondent  
23 "shall submit to the Bureau no later than 15 days from the end of the quarter, an update to the  
24 Bureau indicating the status of all outstanding tax obligations, including, but not limited to,  
25 satisfaction of all tax obligations or documentation of a payment plan for unpaid obligations." To  
26 date, Respondent has failed to report to the Bureau the status of all of her outstanding tax  
27 obligations. Additionally, Respondent has failed to submit to the Bureau a plan for paying all of  
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1 her unpaid tax obligations. (Bus. & Prof. Code, §§ 19856, subds. (b) & (c), 19857, 19920 &  
2 19922; Cal. Code. Regs., tit. 4, § 12349, subd. (f)(1).)

3 **SECOND CAUSE FOR DENIAL**

4 **(Failure to Comply with Statutory and Regulatory Requirements)**

5 10. Respondent's Application is subject to denial and her interim renewal license is  
6 subject to cancellation because she has demonstrated an inability or unwillingness to comply with  
7 statutory and regulatory requirements. In addition to the violation of the conditions placed upon  
8 her interim renewal license, as alleged in paragraph nine above, Respondent has failed to comply  
9 with the following statutory and regulatory requirements:

10 a. Respondent failed to maintain a separate, specifically designated, insured bank  
11 account in an amount not less than the total value of the chips in use, as required by California  
12 Code of Regulations, title 11, section 2053.

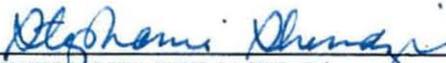
13 b. Respondent has failed to submit financial documents covering all financial  
14 activities of her gambling operation, a violation of California Code of Regulations, title 4, section  
15 12313, for the 2016 fiscal year, for which she was issued a letter of warning on June 1, 2017.  
16 (Bus. & Prof. Code, §§ 19856, subds. (b) & (c), 19857, 19920 & 19922; Cal. Code Regs., tit. 4,  
17 §§ 12313 & 12349, subd. (f)(1), tit. 11, § 2053.)

18 **PRAYER**

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

- 21 1. Denying Respondent's Application;  
22 2. Cancelling Respondent's interim renewal license, number GEGE-001276; and  
23 3. Taking such other and further action as the Commission may deem appropriate.

24  
25 Dated: May 22, 2018

26   
27 STEPHANIE SHIMAZU, Director  
28 Bureau of Gambling Control  
California Department of Justice



1  
2 (d) Take actions deemed to be reasonable to ensure that no  
3 ineligible, unqualified, disqualified, or unsuitable persons are associated  
4 with controlled gambling activities.

4. Business and Professions Code, section 19870 provides:

5 (a) The commission, after considering the recommendation  
6 of the [Bureau] chief and any other testimony and written comments as  
7 may be presented at the meeting, or as may have been submitted in  
8 writing to the commission prior to the meeting, may either deny the  
9 application or grant a license to an applicant who it determines to be  
10 qualified to hold the license.

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

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

17 (d) All proceedings at a meeting of the commission relating  
18 to a license application shall be recorded stenographically or by audio or  
19 video recording.

20 (e) A decision of the commission denying a license or  
21 approval, or imposing any condition or restriction on the grant of a  
22 license or approval may be reviewed by petition pursuant to Section 1085  
23 of the Code of Civil Procedure. Section 1094.5 of the Code of Civil  
24 Procedure shall not apply to any judicial proceeding described in the  
25 foregoing sentence, and the court may grant the petition only if the court  
26 finds that the action of the commission was arbitrary and capricious, or  
27 that the action exceeded the commission's jurisdiction.

5. Business and Professions Code, section 19871 provides:

28 (a) The commission meeting described in Section 19870  
shall be conducted in accordance with regulations of the commission and  
as follows:

(1) Oral evidence shall be taken only upon oath or  
affirmation.

(2) Each party shall have all of the following rights:

(A) To call and examine witnesses.

(B) To introduce exhibits relevant to the  
issues of the case.

(C) To cross-examine opposing witnesses on  
any matters relevant to the issues, even though the

1 matter was not covered on direct examination.

2 (D) To impeach any witness, regardless of  
3 which party first called the witness to testify.

4 (E) To offer rebuttal evidence.

5 (3) If the applicant does not testify in his or her own  
6 behalf, he or she may be called and examined as if under  
7 cross-examination.

8 (4) The meeting need not be conducted according to  
9 technical rules relating to evidence and witnesses. Any  
10 relevant evidence may be considered, and is sufficient in  
11 itself to support a finding, if it is the sort of evidence on  
12 which responsible persons are accustomed to rely in the  
13 conduct of serious affairs, regardless of the existence of any  
14 common law or statutory rule that might make improper the  
15 admission of that evidence over objection in a civil action.

16 (b) Nothing in this section confers upon an applicant a right  
17 to discovery of the department's<sup>[4]</sup> investigative reports or to require  
18 disclosure of any document or information the disclosure of which is  
19 otherwise prohibited by any other provision of this chapter.

20 6. California Code of Regulations, title 4, section 12056 provides:

21 (a) If the Commission elects to hold an evidentiary hearing,  
22 the hearing will be conducted as a GCA hearing under Section 12060,  
23 unless the Executive Director of the Commission determines the hearing  
24 should be conducted as an APA hearing under Section 12058.

### 25 SPECIFIC STATUTORY PROVISIONS

26 7. Business and Professions Code section 19856 provides:

27 (a) Any person who the commission determines is  
28 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

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29 <sup>4</sup> "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.  
30 (h).)

1 commission shall consider whether issuance of the license is inimical to  
2 public health, safety, or welfare, and whether issuance of the license will  
3 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.

4 8. Business and Professions Code, section 19857 provides:

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

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

8 (b) A person whose prior activities, criminal record, if any,  
9 reputation, habits, and associations do not pose a threat to the public  
10 interest of this state, or to the effective regulation and control of  
controlled gambling, or create or enhance the dangers of unsuitable,  
11 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.

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

14 9. Business and Professions Code, section 19875 provides:

15 An owner's gambling license shall be posted at all times in a  
16 conspicuous place in the area where gambling is conducted in the  
establishment for which the license is issued until it is replaced by a  
17 succeeding license.

18 10. Business and Professions Code, section 19920 provides:

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

25 11. Business and Professions Code, section 19922 provides:

26 No owner licensee shall operate a gambling enterprise in violation of  
27 any provision of this chapter or any regulation adopted pursuant to this  
chapter.  
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1 12. Business and Professions Code, section 19954 provides:

2 In addition to those fees required pursuant to Section 19951, each  
3 licensee shall pay an additional one hundred dollars (\$100) for each table  
4 for which it is licensed to the State Department of Public Health for  
5 deposit in the Gambling Addiction Program Fund, which is hereby  
6 established to benefit those who have a gambling addiction problem.  
7 These funds shall be made available, upon appropriation by the  
8 Legislature, to community-based organizations that directly provide aid  
9 and assistance to those persons with a gambling addiction problem.

10 13. California Code of Regulations, title 4, section 12313 provides:

11 (a) Each licensee shall prepare financial statements  
12 covering all financial activities of that TPPPS company, gambling  
13 business, or the gambling enterprise, as applicable, for each fiscal year, in  
14 accordance with generally accepted accounting principles, unless  
15 otherwise provided in this section. If a gambling enterprise (or a person or  
16 entity that has an interest, control, or common control with the licensee)  
17 owns or operates lodging, food, beverage, or any other non- gambling  
18 operation at the gambling establishment, the financial statements must  
19 reflect the results of the gambling operation separately from those non-  
20 gambling operations.

21 (1) A Group I licensee shall engage an  
22 independent accountant licensed by the California Board of  
23 Accountancy to audit the licensee's annual financial  
24 statements in accordance with generally accepted auditing  
25 standards.

26 (2) A Group II licensee shall engage an  
27 independent accountant licensed by the California Board of  
28 Accountancy to, at a minimum, review the licensee's annual  
financial statements in accordance with standards for  
accounting and review services or with currently applicable  
professional accounting standards. The licensee may elect to  
engage an independent accountant licensed by the California  
Board of Accountancy to audit the annual financial  
statements in accordance with generally accepted auditing  
standards.

(3) A Group III licensee shall prepare financial  
statements including at a minimum, a statement of financial  
position, a statement of income or statement of operations,  
and disclosure in the form of notes to the financial statements.  
If the licensee is unable to produce the financial statements, it  
shall engage an independent accountant licensed by the  
California Board of Accountancy to perform a compilation of  
the licensee's annual financial statements in accordance with  
standards for accounting and review services or with

1 currently applicable professional accounting standards,  
2 including full disclosure in the form of notes to the financial  
3 statements. The licensee may elect to engage an independent  
4 accountant licensed by the California Board of Accountancy  
5 to compile or perform a review of the licensee's annual  
6 financial statements in accordance with standards for  
accounting and review services, or to audit the annual  
financial statements in accordance with generally accepted  
auditing standards.

7 (4)(A) A Group IV licensee shall prepare  
8 financial statements that include, at a minimum, a statement  
9 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 one of the following:

10 1. Engage an independent accountant  
11 licensed by the California Board of Accountancy to  
12 perform a compilation of the licensee's annual financial  
13 statements in accordance with standards for accounting  
14 and review services or with currently applicable  
professional accounting standards. Management may  
elect not to provide footnote disclosures as would  
otherwise be required by generally accepted accounting  
principles.

15 2. Submit to the Bureau, no later than  
16 120 calendar days following the end of the year covered  
17 by the federal income tax return, copies of the licensee's  
18 complete, signed, and duly filed federal income tax  
return for the tax year in lieu of the financial statements  
as otherwise required under this section.

19 (B) The licensee may elect to engage an  
20 independent accountant licensed by the California Board of  
21 Accountancy to compile or review the licensee's financial  
22 statements in accordance with standards for accounting and  
review services, or to audit the financial statements in  
accordance with generally accepted auditing standards.

23 (b) The Bureau may require a Group II, III, or IV licensee  
24 to engage an independent accountant licensed by the California Board of  
25 Accountancy to compile or review the licensee's financial statements in  
26 accordance with standards for accounting and review services, or to audit  
the financial statements in accordance with generally accepted auditing  
standards, if there are concerns about the licensee's operation or financial  
reporting, including but not limited to:

27 (1) Inadequate internal control procedures;

28 (2) Insufficient financial disclosure;

- (3) Material misstatement in financial reporting;
- (4) Inadequate maintenance of financial data; or
- (5) Irregularities noted during an investigation.

(c) Unless otherwise provided in this section, a licensee shall submit copies of the annual financial statements, with the independent auditor's or accountant's report issued to meet the requirements under this section, to the Bureau and the Commission no later than 120 calendar days following the end of the fiscal year covered by the financial statements. If a management letter is issued, a copy of the management letter must also be submitted to the Bureau, including the licensee's reply to the management letter if any.

(d) The Bureau or Commission may request additional information and documents from either the licensee or the licensee's independent accountant, regarding the annual financial statements or the services performed by the accountant.

(e) The Bureau or Commission may require the licensee to engage an independent accountant licensed by the California Board of Accountancy to perform a fraud audit in the event that fraud or illegal acts are suspected by the Bureau or Commission.

14. California Code of Regulations, title 4, section 12349 provides, in part:

(f) All of the following conditions shall apply to an interim gambling license granted by the Commission:

- (1) Upon issuance or denial of a regular gambling license, any related interim gambling license shall become invalid.

15. California Code of Regulations, title 11, section 2053, provides:

(a) The Bureau may require a gambling establishment to present satisfactory evidence that there is adequate financing available to protect the public's health, safety and welfare.

(b) A gambling establishment shall maintain a separate, specifically designated, insured account with a licensed financial institution in an amount not less than the total value of the chips in use by the gambling establishment. The funds from that account may only be used to redeem the chips of that gambling establishment. That account may not be used as collateral, or encumbered or hypothecated in any fashion. Alternatively, the Bureau may allow the gambling establishment to provide some other form of security acceptable to the Bureau, in lieu of maintaining the required account.

(c) A gambling establishment shall maintain a separate, specifically designated, insured account with a licensed financial institution in an amount not less than the total amount of the monies that patrons of that gambling establishment have on deposit with the gambling

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establishment. The funds from that account may only be used to return to the patrons the balance of monies on deposit with the gambling establishment. That account may not be used as collateral, or encumbered or hypothecated in any fashion. Alternatively, the Bureau may allow the gambling establishment to provide some other form of security acceptable to the Bureau, in lieu of maintaining the required account.