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

11
 12 **In the Matter of the Second Amended
 Accusation and Statement of Issues Against:**

13 **ARTICHOKE JOE’S (GEOW-002367),
 14 doing business as Artichoke Joe’s Casino
 (GEGE-001007);**

15 **SALLY ANN JOHNSON FAMILY TRUST
 16 (GEOW-003112);**

17 **HELEN SAMMUT LIVING TRUST
 18 (GEOW-002390);**

19 **MICHAEL J. SAMMUT AJ STOCK
 TRUST (GEOW-002388);**

20 **KAREN A. SAMMUT (GEOW-003370;
 21 GEOW-002371);**

22 **DENNIS J. SAMMUT AJ STOCK TRUST
 (GEOW-003368); and**

23 **SALLY JOHNSON (GEOW-002368).**

24 **659 Huntington Avenue**
 25 **San Bruno, CA 94066**

26 **Respondents.**

OAH No. 2020070204

BGC Case No. HQ 2017-00004AC

**SECOND AMENDED ACCUSATION
 AND STATEMENT OF ISSUES**

(Replacing the Amended Accusation and
 Statement of Issues filed on December 8, 2020)

1 Complainant alleges as follows:

2 **PARTIES**

3 1. Stephanie Shimazu (Complainant) brings this Second Amended Accusation and
4 Statement of Issues (Charging Pleading) solely in her official capacity as the Director of the
5 California Department of Justice, Bureau of Gambling Control (Bureau). This Charging
6 Pleading replaces the Amended Accusation and Statement of Issues filed on December 8, 2020
7 (Amended Accusation), which replaced the Accusation filed on November 15, 2017 (Initial
8 Accusation).

9 2. Artichoke Joe's Casino (Casino) is a licensed gambling establishment, California
10 State Gambling License Number GEGE-001007. It is a 51-table card room presently operating
11 at 659 Huntington Avenue, San Bruno, California 94066. It is owned by Artichoke Joe's
12 (Corporation), which is licensed as license number GEOW-000961. At the time of the Initial
13 Accusation's filing, the Corporation's officers were Dennis J. Sammut (Dennis Sammut),
14 license number GEOW-003369, and Helen M. Sammut (Helen Sammut), license number
15 GEOW-002370. At the time of the Initial Accusation's filing, Dennis Sammut and Helen
16 Sammut, along with Sally Johnson, whose license number is GEOW-002368, were the
17 Corporation's directors. The Corporation's shareholders (collectively, Shareholders) are: the
18 Sally Ann Johnson Family Trust, license number GEOW-00311, of which Sally Johnson is
19 trustee; the Michael J. Sammut AJ Stock Trust, license number GEOW-00002388, of which
20 respondent Karen A. Sammut, whose license numbers are GEOW-003370 and GEOW-002371,
21 is trustee; the Helen Sammut Living Trust, license number GEOW-002390, of which Karen
22 Sammut, currently is trustee; and the Dennis J. Sammut AJ Stock Trust, license number
23 GEOW-003368, of which Karen A. Summut currently is trustee.

24 a. Dennis Sammut passed away in January 2020 and is no longer a licensee.
25 For that reason, he is not a respondent in this Charging Pleading even though he was a
26 respondent in the Initial Accusation.

1 eventually disclosed the investigation, their disclosure contained false and misleading
2 information. Additionally, after the Initial Accusation's filing, the Corporation consented to the
3 assessment of monetary penalties in the amount of \$8.0 million and admitted, among other
4 things, to BSA violations and the failure to maintain an adequate anti-money laundering (AML)
5 program. Those monetary penalties are the highest amount assessed against any California card
6 room.

7 5. Failing to timely disclose, providing false and misleading information, and the
8 admitted BSA violations violated Respondents' duties and responsibilities under the Act and the
9 regulations adopted thereunder and made them unsuitable for licensing. Respondents'
10 continued licensure undermines the public trust that licensed gambling does not endanger the
11 public health, safety, and welfare. It also undermines the public trust that the licensed gambling
12 industry is free from corruptive elements. The Commission previously disciplined the
13 Corporation for a loan-sharking operation conducted on its premises. Respondents are not
14 suitable for continued licensure under the Act and regulations adopted pursuant thereto.
15 Respondents' continued licensure is inimical to the public health, safety, and welfare.

16 **JURISDICTION AND COST RECOVERY**

17 6. The Commission has jurisdiction over the operation and concentration of
18 gambling establishments and all persons and things having to do with the operation of gambling
19 establishments. (Bus. & Prof. Code, § 19811, subd. (b).) The Act tasks the Bureau with,
20 among other responsibilities, investigating suspected violations of the Act and initiating
21 disciplinary actions. (Bus. & Prof. Code, §§ 19826, subds. (c) & (e) & 19930, subd. (b).) Upon
22 the Bureau filing an accusation, the Commission proceeds under Government Code section
23 11500 et seq. (Bus. & Prof Code, § 19930, subd. (b); see Cal. Code Regs., tit. 4, § 12554, subd.
24 (a).) The Commission's disciplinary powers include, among other things, revocation and
25 imposition of a fine or monetary penalty. (Cal. Code Regs., tit. 4, § 12554, subd. (d).)

26 7. In a matter involving revocation or denial of a license by an administrative law
27 judge, the Bureau may recover its costs of investigation and prosecuting the proceeding. (Bus.
28 & Prof. Code, § 19930, subd. (d).)

1 (Bus. & Prof. Code, §§ 19801, 19823, 19856, subd. (c), 19857, subds. (a) & (b), 19920, 19922,
2 19924; Cal. Code Regs., tit. 4, § 12315, subd. (a); 31 C.F.R. §§ 1021.210(b), 1021.311.)

3 **FACTORS IN AGGRAVATION OF PENALTY**

4 **(Cal. Code Regs., tit. 4, § 12556)**

5 12. The Corporation has been disciplined before. On May 9, 2011, the Commission
6 issued a Stipulation and Order (Stipulated Settlement) in *In the Matter of the Accusation*
7 *Against: Artichoke Joe's, etc.*, CGCC Case No. 2011-03-04-2. The Stipulated Settlement
8 resolved an accusation against the Corporation. The allegations in that accusation arose out of
9 loan-sharking activities, illegal drug sales, and the failure to meet BSA reporting requirements.
10 In the Stipulated Settlement, the Corporation did not contest illegal loans alleged in the
11 accusation and that a serious problem of loan-sharking existed at the Casino. The alleged
12 violations of the Act for illegal drug sales and the failure to meet BSA reporting requirements
13 were withdrawn as part of the settlement. In the Stipulated Settlement, the Bureau agreed,
14 among other things, not to recommend revocation of the Corporation's or its owner licensees'
15 licenses based upon allegations made, or that could have been made, in the accusation. The
16 Corporation agreed, among other things, that cash handling employees would receive special
17 training on the applicable BSA provisions and all cash tracking forms and reporting
18 requirements would be reviewed.

19 13. In settling the prior accusation pursuant to the Stipulated Settlement, the
20 Corporation agreed to pay a total fine of \$550,000 with \$275,000 being stayed for two years. If
21 no proceeding was brought during the two-year stay period, the stayed portion of the fine was
22 canceled. The Corporation also agreed to pay \$300,000 for the costs of investigation and the
23 accusation's prosecution. At the time of the Stipulated Settlement, the total amount of the fine
24 and cost reimbursement was the highest imposed on a California card room.


25 14. The conduct alleged in this Charging Pleading is similar to acts and omissions
26 alleged in the previous proceeding and involves the failure to conduct training and implement
27 internal controls as agreed in the Stipulated Settlement.
28

PRAYER

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

1. Revoking and denying the renewal application for California State Gambling License Number GEOW-002367, issued to respondent Artichoke Joe's;
2. Revoking and denying the renewal application for California State Gambling License Number GEOW-003112, issued to respondent Sally Ann Johnson Family Trust;
3. Revoking and denying the renewal application for California State Gambling License Number GEOW-002390, issued to respondent Helen Sammut Living Trust;
4. Revoking and denying the renewal application for California State Gambling License Number GEOW-002388, issued to respondent Michael J. Sammut AJ Stock Trust;
5. Revoking and denying the renewal application for California State Gambling License Numbers GEOW-003370 and GEOW-002371, issued to respondent Karen A. Sammut;
6. Revoking and denying the renewal application for California State Gambling License Number GEOW-003368, issued to respondent Dennis J. Sammut AJ Stock Trust;
7. Revoking and denying the renewal application for California State Gambling License Number GEOW-002368, issued to respondent Sally Johnson;
8. Imposing fines or monetary penalties against Respondents, jointly and severally, according to proof and to the maximum extent allowed by law;
9. Awarding Complainant the costs of investigation and costs of bringing this Charging Pleading before the Commission, pursuant to Business and Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and
10. Taking such other and further action as the Commission may deem appropriate.

Dated: February 11, 2021


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

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(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, deny any application for a license, . . . 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 department³ . . . shall have all of the following responsibilities:

* * *

(c) To investigate suspected violations of this chapter or laws of this state relating to gambling

* * *

³ “Department” refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).) The Bureau is an entity within the Department of Justice.

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

6 6. Business and Professions Code section 19856 provides, in part:

7 (a) Any person who the commission determines is qualified to receive
8 a state license, having due consideration for the proper protection of the
9 health, safety, and general welfare of the residents of the State of
10 California and the declared policy of this state, may be issued a license.
11 The burden of proving his or her qualifications to receive any license is on
12 the applicant.

13 * * *

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

20 7. Business and Professions Code section 19857 provides:

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

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

25 (b) A person whose prior activities, criminal record, if any,
26 reputation, habits, and associations do not pose a threat to the public
27 interest of this state, or to the effective regulation and control of
28 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.

8. 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:

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

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

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10
11 9. Business and Professions Code section 19866 provides:

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

17
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
21 be operated in a manner suitable to protect the public health, safety,
22 and general welfare of the residents of the state. The responsibility for
23 the employment and maintenance of suitable methods of operation
24 rests with the owner licensee, and willful or persistent use or toleration
25 of methods of operation deemed unsuitable by the commission or by
26 local government shall constitute grounds for license revocation or
27 other disciplinary action.

28 11. Business and Professions Code section 19922 provides:

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

12. Business and Professions Code section 19924 provides:

Each owner licensee shall maintain security controls over the
gambling premises and all operations therein related to gambling, and
those security controls are subject to the approval of the commission.

13. Business and Professions Code section 19930 provides, in part:

(b) If, after any investigation, the department is satisfied that a license,
permit, finding of suitability, or approval should be suspended or revoked, it
shall file an accusation with the commission in accordance with Chapter 5

1 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
2 Government Code.

3 * * *

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

9 (1) The costs assessed pursuant to this subdivision shall be fixed
10 by the administrative law judge and may not be increased by the
11 commission. When the commission does not adopt a proposed decision
12 and remands the case to the administrative law judge, the administrative
13 law judge may not increase the amount of any costs assessed in the
14 proposed decision.

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

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

22 * * *

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

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

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

28 14. Business and Professions Code section 19944 provides, in part:

Any person who willfully resists, prevents, impedes, or interferes
with the department or the commission or any of their agents or
employees in the performance of duties pursuant to this chapter is
guilty of a misdemeanor

1 15. Business and Professions Code section 19971 provides:

2 This act is an exercise of the police power of the state for the
3 protection of the health, safety, and welfare of the people of the State of
4 California, and shall be liberally construed to effectuate those purposes.

5 **California Code of Regulations, Title 4**

6 16. California Code of Regulations, title 4, section 12315 provides:

7 (a) A gambling enterprise is required to file a report of each
8 transaction involving currency in excess of \$10,000, in accordance with
9 section 14162(b) of the Penal Code.

10 (b) A gambling enterprise, regardless of gross revenue, shall
11 make and keep on file at the gambling establishment a report of each
12 transaction in currency, in accordance with sections 5313 and 5314 of
13 Title 31 of the United States Code and with Chapter X of Title 31 of the
14 Code of Federal Regulations, and any successor provisions. These
15 reports shall be available for inspection at any time as requested by the
16 Bureau.

17 (c) Nothing in this section shall be deemed to waive or to
18 suspend the requirement that a gambling enterprise make and keep a
19 record and file a report of any transaction otherwise required by the
20 Bureau or the Commission.

21 17. California Code of Regulations, title 4, section 12554 provides, in part:

22 (a) Upon the filing with the Commission of an accusation by the
23 Bureau recommending revocation, suspension, or other discipline of a
24 holder of a license, registration, permit, finding of suitability, or approval,
25 the Commission shall proceed under Chapter 5 (commencing with section
26 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

27 * * *

28 (c) The Administrative Law Judge and Commission shall base their
decisions on written findings of fact, including findings concerning any
relevant aggravating or mitigating factors. Findings of fact shall be based
upon a preponderance of the evidence standard. The “preponderance of
the evidence standard” is such evidence as when considered and compared
with that opposed to it, has more convincing force, and produces a belief in
the mind of the fact-finder that what is sought to be proved is more likely
true than not true.

(d) Upon a finding of a violation of the Act, any regulations adopted
pursuant thereto, any law related to gambling or gambling establishments,
violation of a previously imposed disciplinary or license condition, or laws

1 whose violation is materially related to suitability for a license,
2 registration, permit, or approval, the Commission may do any one or more
3 of the following:

4 (1) Revoke the license, registration, permit, finding of suitability,
5 or approval;

6 (2) Suspend the license, registration, or permit;

7 * * *

8 (4) Impose any condition, limitation, order, or directive . . . ;

9 (5) Impose any fine or monetary penalty consistent with
10 Business and Professions Code sections 19930, subdivision (c), and
11 19943, subdivision (b)

12 18. California Code of Regulations, title 4, section 12568, subdivision (c), provides, in
13 part:

14 A state gambling license, finding of suitability, or approval granted
15 by the Commission . . . and an owner license for a gambling
16 establishment if the owner licensee has committed a separate violation
17 from any violations committed by the gambling establishment shall be
18 subject to revocation by the Commission on any of the following
19 grounds:

20 * * *

21 (3) If the Commission finds the holder no longer meets
22 any criterion for eligibility, qualification, suitability or continued
23 operation, including those set forth in Business and Professions
24 Code section 19857, 19858, or 19880, as applicable, or

25 (4) If the Commission finds the holder currently meets
26 any of the criteria for mandatory denial of an application set forth
27 in Business and Professions Code sections 19859 or 19860.

28 **California Code of Regulations, Title 11**

19. California Code of Regulations, title 11, section 2052, subdivision (c), provides:

20 Within five days of any owner licensee or key employee obtaining
21 knowledge or notice of any possible violation of the Act or these
22 regulations, a written report shall be submitted to the Bureau, which
23 details the nature of the violation, the identities of those persons
24 involved in the violation, and describes what actions have been taken to
25 address the violation.

ATTACHMENT 1

**Consent to the Assessment of
Civil Money Penalty (Apr. 30, 2018)**

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:)
)
)
Artichoke Joe’s, a California Corporation)
d/b/a Artichoke Joe’s Casino) **Number 2018-02¹**
San Bruno, California)

CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against Artichoke Joe’s, a California corporation d/b/a Artichoke Joe’s Casino (AJC), pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.²

AJC admits to the facts set forth below and that its conduct violated the BSA. AJC consents to the assessment of a civil money penalty and enters into this CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN.

FinCEN has the authority to investigate and impose civil money penalties on card clubs for violations of the BSA.³ Rules implementing the BSA state that “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other

¹ The Assessment of Civil Money Penalty (2017-005), dated November 15, 2017, in which FinCEN imposed on Artichoke Joe’s Casino a civil money penalty of \$8,000,000 is rescinded. All references in this CONSENT to the “ASSESSMENT OF CIVIL MONEY PENALTY” or “ASSESSMENT” are references to the order issued on May 3, 2018.

² The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

³ 31 C.F.R. § 1010.810(a); Treasury Order 180-01 (July 1, 2014).

agencies exercising delegated authority under this chapter” has been delegated by the Secretary of the Treasury to FinCEN.⁴

AJC is a card club located in San Bruno, California and has been in operation since 1916. It contains 38 tables offering card and tile games, including baccarat, blackjack, poker, and Pai Gow. AJC was a “financial institution” and a “card club” within the meaning of the BSA and its implementing regulations during the time relevant to this action.⁵ The Internal Revenue Service (IRS) examines card clubs for compliance with the BSA under authority delegated by FinCEN.⁶ IRS conducted an examination of AJC in 2015 that identified significant violations of the BSA.

On May 9, 2011, AJC entered into a stipulated settlement with the California Bureau of Gambling Control. AJC agreed to pay a fine of \$550,000, with \$275,000 stayed for a two-year period, and agreed to modify its surveillance, work with the city of San Bruno to improve coordination with law enforcement, replace employees at the Pai Gow tables, and provide additional training on loan-sharking, illegal drugs, and compliance with the BSA.⁷

II. DETERMINATIONS

FinCEN has determined that AJC willfully violated the BSA’s program and reporting requirements from October 19, 2009 through November 15, 2017.⁸ As described below, AJC: (a)

⁴ 31 C.F.R. § 1010.810(a).

⁵ 31 U.S.C. § 5312(a)(2)(X); 31 C.F.R. § 1010.100(t)(6).

⁶ 31 C.F.R. § 1010.810(b)(8).

⁷ *In the Matter of the Accusation Against: Artichoke Joe’s, a California corporation dba Artichoke Joe’s Casino*, California Gambling Control Commission Case No. 2011 03-04-2 (May 9, 2011).

⁸ In civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. AJC admits to “willfulness” only as the term is used in civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1).

failed to implement and maintain an effective anti-money laundering program;⁹ and (b) failed to detect and adequately report suspicious transactions in a timely manner.¹⁰

A. Violations of the Requirement to Establish and Implement an Effective Anti-Money Laundering Program

The BSA and its implementing regulations require card clubs to develop and implement written anti-money laundering (AML) programs reasonably designed to assure and monitor compliance with the BSA.¹¹ AJC was required to implement an AML program that, at a minimum, provided for: (a) a system of internal controls to assure ongoing compliance; (b) independent testing of the card club's AML program by card club personnel or parties external to the card club; (c) training of personnel; (d) the designation of an individual or individuals responsible for assuring day-to-day compliance; (e) procedures for using all available information to determine and verify name; address, social security or taxpayer identification number, and other identifying information for a person, to the extent determining and verifying the information is otherwise required under the BSA; (f) procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious; (g) procedures for using all available information to determine whether any records must be made and maintained pursuant to the BSA; and (h) for card clubs with automated data processing systems, use of such systems to aid in assuring compliance.¹²

⁹ 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210.

¹⁰ 31 U.S.C. § 5318(g); 31 C.F.R. § 1021.320.

¹¹ 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210(b)(1).

¹² 31 C.F.R. § 1021.210(b)(2).

1. Internal Controls

AJC failed to implement an adequate system of internal controls to assure ongoing compliance with the BSA. AJC's failure to implement adequate internal controls exposed the card club to a heightened risk of money laundering and criminal activity. Indeed, a federal criminal investigation led to the 2011 racketeering indictment and conviction of two AJC customers and others for loan-sharking and other illicit activities conducted at AJC with the direct assistance of the card club's employees.¹³ Loan-sharks, who extended extortionate and unlawful credit to patrons of AJC, openly used AJC to facilitate their activities by conducting illicit transactions within the card club, using the card club's gaming chips and U.S. currency. Some AJC employees knew that the transactions involved loan-sharking funds and, in some instances, acted to facilitate the transactions.¹⁴ AJC failed to implement adequate policies and procedures to identify and report the criminal activity that took place inside the card club.

Deficiencies in AJC's internal controls persisted over an extended period of time. For example, through 2013, the program AJC instituted was incomplete and contained numerous gaps. The 2012 AML program's section on the negotiable instruments log consisted solely of a highlighted phrase, "Describe Card Club procedures." Other sections of the AML program were blank, omitted, or contained placeholders such as "Insert explanation of how we intend to accomplish," "Insert Description of Systems in Place," and "find actual wording."

Other internal controls deficiencies persisted beyond 2012. AJC continued to lack adequate policies and procedures to determine when a customer should receive additional scrutiny after the filing of a Suspicious Activity Report (SAR). When it filed multiple SARs on a customer, AJC often

¹³ J. in a Criminal Case, *United States v. Cuong Mach Binh Tieu, et al.*, No. CR-11-00097 (N.D. CA. July 5, 2012), ECF No. 263, ECF No. 554.

¹⁴ *Id.*

failed to adequately monitor and review subsequent customer activity. For example, in 2016, AJC subjected the card club to a high risk of money laundering when it failed to monitor one customer, on whom it filed nine SARs for suspicious source of funds between 2012 and 2015. Despite the fact that the customer engaged in over \$1.8 million of cash-in transactions from June 2016 through September 2016, AJC did not adequately monitor that customer's transactions to determine if it should file a SAR.

AJC did not implement adequate procedures to ensure that it filed complete and accurate BSA reports. Further, although AJC filed multiple SARs that describe activity where customers used agents to cash in more than \$10,000, AJC did not file corresponding currency transaction reports (CTRs). Even on transactions where this activity was reported in both CTRs and SARs, AJC failed to correctly report activity of agents making cash in transactions on behalf of customers. In January 2017, for example, a SAR was filed on an individual for suspiciously conducting transactions on behalf of a customer. However, the three corresponding CTRs for this transaction failed to identify the customer for whom the transaction was conducted.

Backline Betting, Kum Kum Betting, and Kum Kum Banking

Despite offering backline betting, Kum Kum betting, and Kum Kum banking, AJC did not have internal controls in place to mitigate the risks associated with these activities.¹⁵ Only one acknowledgement of "backline betting" was contained in AJC's written compliance program, which stated only that the practice takes place. The program failed to address risks presented by practices that could allow customers to pool or co-mingle their bets with relative anonymity. In

¹⁵ Kum Kum betting allows customers to move, add, subtract or pool their wagers around a table or at different player positions to form one wager. Generally, the individual with the highest wager is the only one to see the cards dealt. Kum Kum banking is the practice of players pooling their funds to form one bank, which is used to bet against the other players at a table game.

fact, AJC contended that “players at card rooms have the right to play anonymously.” Accordingly, AJC had no procedures in place to identify individuals participating in backline betting, Kum Kum betting, or Kum Kum banking, nor did it have procedures for the collection of customer information in situations where conduct by the individuals could be indicative of suspicious activity. The failure to incorporate these practices into its policies and procedures detrimentally impacted AJC’s ability to collect information on customers’ identities, which was required to meet its BSA reporting obligations. FinCEN has stated repeatedly that card clubs must have procedures for ensuring the identification of individuals involved in backline betting, Kum Kum betting, or Kum Kum banking.¹⁶

2. Procedures for Using All Available Information

The regulations covering card clubs require the institution to use all available information to identify and verify customer information including name, permanent address, and social security number and to determine occurrences of transactions or patterns of transactions that warrant the filing of a SAR.¹⁷

FinCEN has made it clear that propositional players must be incorporated into programs for ensuring compliance with the BSA.¹⁸ The BSA requires card clubs to monitor and file reports on suspicious activity that it knows or reasonably should know occurred by, at, or through the card

¹⁶ FIN-2007-G005, Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements (Nov. 14, 2007); FIN-2012-G004, Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements (Aug. 13, 2012).

¹⁷ 31 C.F.R. § 1021.210(b)(2)(v).

¹⁸ FIN-2007-G005, Frequently Asked Questions: Casino Recordkeeping, Reporting, and Compliance Program Requirements at 7-8 (Nov. 14, 2007). A propositional player is paid by a casino or card club to wager at a game. The propositional player wagers with his or her personal funds and retains any winnings and absorbs any losses. A propositional player's function is to start a game, to keep a sufficient number of players in a game, or to keep the action going in a game. The propositional player may be an employee of the casino or card club, or the casino or card club may enter into a contractual arrangement with a "third party provider of propositional player services.”

club. AJC did not establish procedures for obtaining and utilizing information from propositional players who may have observed suspicious transactions. Despite its use of propositional players to wager at the card club, AJC did not mention propositional players in its AML program. In a 2011 interview with law enforcement, a third party propositional player contracted by AJC provided information identifying a customer lending money to other customers at the Pai Gow area — no policies and procedures were in place to use this information to determine whether or not a SAR should have been filed.

AJC failed to implement adequate procedures to ensure that it used available information to file complete SARs that fully described the extent of suspicious activity when it was in fact identified. Of the twelve SARs that AJC filed from 2010 to 2011, all contained inadequate narratives. The narratives, consisting solely of one to three sentence statements, failed to include information on the transactions in question that was essential to ensuring that the reports would prove useful to law enforcement. In 2015, AJC installed a full-time compliance officer and the volume of AJC's SAR filings and details provided in the SAR narratives have increased. In addition, as of 2011, AJC updated its ability to identify, detect, and report suspicious activity by installing a new video surveillance system, to detect illegal activity and potential structuring.

AJC failed to implement adequate policies and procedures to monitor transactions for structuring or to determine the source of chips redeemed when there was not an accompanying chip purchase, or to gather and utilize information and monitor customers in response to indicia of suspicious activity. For example, when questioned specifically about loan-shark activity, the former Facilities Manager replied, "It's a Casino. There's always [expletive] loan-sharks." The former Facilities Manager claimed that AJC's practice was to kick out suspected loan-sharks and bar them from returning to the club. The former General Manager and the former Pai Gow Manager also

acknowledged that loan-sharking activity at AJC was prevalent over a period of four to five years. AJC did not have adequate policies and procedures in place for ensuring that any of this information was used in identifying suspicious transactions and reporting the transactions to the broader law enforcement community through the filing of SARs. This shortcoming persisted even after state and federal law enforcement executed search warrants and made arrests at AJC in March 2011, and a federal indictment charging several of AJC's patrons was made public.

3. Independent Testing

AJC failed to conduct adequate independent testing.¹⁹ AJC's first independent test was conducted in August 2011, following the execution of search warrants and arrests by state and federal officials. This independent test was the first the card club had conducted — 13 years after FinCEN established the program requirement for casinos and card clubs.²⁰ Periodic independent testing enables a financial institution to identify and correct deficiencies in its AML program. Among other findings, the 2011 independent test identified weaknesses in AJC's policies and procedures for identifying suspicious transactions, issues with transaction aggregation in the multiple transaction log, the use of out of date SAR and CTR forms, an incomplete risk assessment, and the failure to file a SAR. This 2011 independent test, which was conducted six months after state and federal law enforcement executed their search warrants, specifically stated that "the types of suspicious activity that might occur in each department [are] not adequately defined." Further, it identified weakness in AJC's ability to monitor chip transfers between customers, suggesting that "surveillance should monitor the participants to determine whether there appears to be intent to

¹⁹ 31 C.F.R. § 1021.210(b)(2)(ii).

²⁰ Amendments to Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping by Card Clubs, 63 F.R. 1919 (Jan. 13, 1998).

circumvent reporting requirements.” At the time of the IRS 2015 examination, AJC had not conducted any additional independent testing since its initial test in 2011. The scope and frequency of independent testing must be commensurate with the money laundering and terrorist financing risks confronting the card club.²¹

B. Violations of Suspicious Activity Reporting Requirements

The BSA and its implementing regulations require a card club to report a transaction that the card club “knows, suspects, or has reason to suspect” is suspicious, if the transaction is conducted or attempted by, at, or through the card club, and if the transaction involves or aggregates to at least \$5,000 in funds or other assets.²² A transaction is “suspicious” if the transaction: (a) involves funds derived from illegal activity; (b) is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of funds or assets derived from illegal activity; (c) is designed, whether through structuring or other means, to evade any requirement in the BSA or its implementing regulations; (d) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the card club knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (e) involves use of the card club to facilitate criminal activity.²³

AJC failed to report suspicious transactions involving AJC chips used to facilitate loan-sharking. From 2009 to 2011, AJC senior-level employees and managers acknowledged the

²¹ 31 C.F.R. § 1021.210(b)(2)(ii).

²² 31 C.F.R. § 1021.320(a)(2).

²³ 31 C.F.R. § 1021.320(a)(2)(i)-(iv).

prevalence of loan-sharks; the former Pai Gow Manager claimed that he had reported “numerous occasions” of loan-sharking to local law enforcement and that AJC’s practice was to kick suspected loan-sharks out of the card club and bar them from returning.²⁴ Nevertheless, AJC failed to file SARs for several transactions, conducted during the period from 2009 to 2011, in which loan-sharks provided \$5,000 or more in AJC chips to customers on the gaming floor and within plain sight of AJC employees. In fact, AJC failed to file any SARs in 2009, filed four SARs in 2010, and filed eight SARs in 2011. None of the SARs filed discuss or identify loan-sharking.

While the volume of AJC’s SARs increased over time, AJC continued to experience difficulties in complying with suspicious activity reporting requirements. Over one quarter of the SARs that AJC filed between 2010 and 2014 were filed later than 90 days after the initial detection of facts that would constitute the basis for filing a SAR.²⁵ Additionally, AJC failed to file SARs for suspicious transactions conducted by 59 patrons. AJC admitted that it should have filed SARs on the transactions of ten of these patrons. At least 16 of these patrons had conducted multiple transactions at or just below \$10,000 over the course of one week or less. None of those transactions were flagged by AJC for review prior to the IRS examination. Other transactions include a patron redeeming \$40,000 in chips in one day with no cash-in or gaming activity, and a patron who redeemed over \$90,000 in chips over the course of approximately five months with no cash-in activity. AJC failed to produce any records that its examinations of the available facts provided a reasonable explanation for the transactions.²⁶

²⁴ Notifying law enforcement does not relieve a card club of its obligation to file a timely SAR. 31 CFR § 1021.320(a)(3) (“In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a [timely SAR]...”). Reports filed under the BSA are a source of financial intelligence for multiple agencies.

²⁵ 31 C.F.R. § 1021.320(b)(3).

²⁶ 31 C.F.R. § 1021.320(a)(2)(iii).

III. CIVIL MONEY PENALTY

FinCEN has determined that AJC willfully violated the BSA and its implementing regulations and that grounds exist to assess a civil money penalty for these violations.²⁷ FinCEN has determined that the appropriate penalty in this matter is \$8,000,000.

FinCEN may impose a civil money penalty of \$25,000 for each willful violation of AML program requirements that occurs on or before November 2, 2015.²⁸ The BSA states that a “separate violation” of the requirement to establish and implement an effective AML program occurs “for each day that the violation continues.”²⁹ FinCEN may impose a penalty not to exceed the greater of the amount involved in the transaction (but capped at \$100,000) or \$25,000 for each willful violation of SAR requirements that occurs on or before November 2, 2015.³⁰

FinCEN reviewed financial statements provided by AJC and considered AJC’s financial condition and ability to pay. FinCEN considered the size and sophistication of AJC, one of the larger clubs operating in California, generally with few customers from outside the state. Furthermore, FinCEN noted the severity and duration of AJC’s BSA violations. Over a period of eight years, AJC failed to implement adequate internal controls, to conduct sufficient independent testing, and to comply with SAR requirements. FinCEN also considered AJC’s awareness of loan-sharking activity on its premises, as well as AJC’s culture of compliance. AJC’s adoption of remedial measures and its cooperation with the IRS examination and FinCEN’s investigation were

²⁷ 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.

²⁸ For each willful violation of AML program requirements that occurs after November 2, 2015, a civil money penalty of \$54,789 may be imposed. 31 C.F.R. § 1010.821.

²⁹ 31 U.S.C. § 5321(a)(1).

³⁰ For each willful violation that occurs after November 2, 2015, the ceiling is increased from \$100,000 to \$219,156, and the floor is increased from \$25,000 to \$54,789. 31 CFR § 1010.821.

factored into FinCEN's determination. FinCEN considered its recent enforcement actions against casinos and card clubs and the impact that its penalty against AJC would have on compliance with the BSA by the casino and card club industry.

FinCEN hereby imposes a penalty in the amount of \$8,000,000, with \$3,000,000 suspended pending compliance with the Undertakings set forth in Section IV of this Consent. Payment of \$5,000,000 is due in 30 days. If AJC fails to comply with the Undertakings set forth in Section IV of this Consent, AJC shall pay the entire penalty of \$8,000,000. Nothing in this Consent shall limit the ability of FinCEN to enforce the Undertakings through means other than the assessment of civil money penalties.

IV. UNDERTAKINGS

In furtherance of its compliance efforts, AJC has undertaken to:

- (1) Within 60 days from the date of the ASSESSMENT, at its own cost, hire a qualified independent consultant, subject to FinCEN approval, to review the effectiveness of AJC's AML program. The independent consultant will conduct two reviews, with a review conducted for each year (a "Review Period") during the two-year period beginning on the date of the ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT). Within 60 days from the end of each Review Period, the independent consultant will submit to FinCEN and to AJC a written report: (1) addressing the adequacy of AJC's AML program; (2) describing the review performed and the conclusions reached; and (3) describing any recommended modifications or enhancements to AJC's AML program. Interim reports, drafts, workpapers or other supporting materials will be made available to FinCEN upon request. AJC will adopt and implement any recommendations made by the independent consultant or, within 30

days after issuance of a report, propose alternatives. The independent consultant will provide a written response to any proposed alternatives within 60 days. Within 30 days after issuance of a report or a written response from the consultant regarding AJC's proposed alternatives, AJC will provide FinCEN with a written report detailing the extent to which it has adopted and implemented recommendations made by the independent consultant.

- (2) Employ, or continue to employ a compliance officer to ensure day-to-day compliance with its obligations under the BSA and implementing regulations.
- (3) Within 45 days from the date of the ASSESSMENT, adopt and implement an AML program that includes policies, procedures, and internal controls for:
 - a. Obtaining and utilizing information from propositional players; and
 - b. Creating, retaining, and utilizing records related to backline betting, kum kum betting, and kum kum banking.
- (4) Within 60 days from the date of the ASSESSMENT, at its own cost, hire a qualified independent consultant, subject to FinCEN approval, to conduct a "look-back." The independent consultant will review transactions or attempted transactions that occurred during the period from December 31, 2011 through December 31, 2014 (Covered Transactions) to determine whether activity was properly identified and reported under 31 U.S.C. § 5318(g) and implementing regulations. The independent consultant will prepare and deliver a detailed written report to FinCEN and AJC by December 31, 2018. Interim reports, drafts, workpapers or other supporting materials will be made available to FinCEN upon request. AJC will comply with any recommendation or request from the independent consultant or FinCEN that AJC file SARs for Covered Transactions.

(5) Certify, in writing, compliance with the Undertakings set forth above. The certification shall identify the Undertaking, include written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FinCEN may make reasonable requests for further evidence of compliance, and AJC will provide such evidence. The certification and supporting material will be submitted to FinCEN within 30 days of completion of each Undertaking.

V. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, AJC consents to the ASSESSMENT and to the civil money penalty and Undertakings set forth therein, and admits that it violated the BSA's program and reporting requirements.

AJC recognizes and states that it enters into this CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce AJC to enter into this CONSENT, except for those specified in this CONSENT.

AJC understands and agrees that this CONSENT embodies the entire agreement between AJC and FinCEN. AJC further understands and agrees that there are no express or implied promises, representations, or agreements between AJC and FinCEN other than those expressly set forth or referred to in this document and that nothing in this CONSENT or in the ASSESSMENT is binding on any other agency of government, whether Federal, State, or local.

VI. PUBLIC STATEMENTS

AJC expressly agrees that it shall not, nor shall its attorneys, agents, partners, directors, officers, employees, affiliates, or any other person authorized to speak on its behalf, make any public statement contradicting either its acceptance of responsibility set forth in this CONSENT or

any fact in the DETERMINATIONS section of this CONSENT. FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of this CONSENT. If AJC, or anyone claiming to speak on behalf of AJC, makes such a contradictory statement, AJC may avoid a breach of the agreement by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that AJC did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in this CONSENT and reinstitute enforcement proceedings against AJC. AJC expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other findings made in this CONSENT. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of AJC in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of AJC or unless AJC later ratifies such claims, directly or indirectly. AJC further agrees that, upon notification by FinCEN, AJC will repudiate such statement to the extent it contradicts either its acceptance of responsibility or any fact in this CONSENT.

VII. RELEASE

Execution of this CONSENT, and compliance with the terms of the ASSESSMENT and this CONSENT, settles all claims that FinCEN may have against AJC for the conduct described in Section II of this CONSENT. Execution of this CONSENT, and compliance with the terms of the ASSESSMENT and this CONSENT, does not release any claim that FinCEN may have for conduct by AJC other than the conduct described in Section II of this CONSENT, or any claim that FinCEN may have against any director, officer, owner, employee, or agent of AJC, or any party other than AJC. Upon request, AJC shall truthfully disclose to FinCEN all factual information not protected

by a valid claim of attorney-client privilege or work product doctrine with respect to the conduct of its current or former directors, officers, employees, agents, or others.

If FinCEN determines, in its sole judgment, that AJC has breached any portion of this agreement, FinCEN may void, in its sole discretion, the releases contained in this CONSENT and reinstitute enforcement proceedings against AJC. AJC expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other finding made in this CONSENT.

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VIII. WAIVERS

Nothing in this CONSENT or the ASSESSMENT shall preclude any proceedings brought by FinCEN to enforce the terms of this CONSENT or the ASSESSMENT, nor shall it constitute a waiver of any right, power, or authority of any other representative of the United States or agencies thereof, including but not limited to the Department of Justice.

In executing this CONSENT, AJC stipulates to the terms of this CONSENT and waives:


- a. All defenses to this CONSENT and the ASSESSMENT which can be waived;
- b. Any claim of Double Jeopardy based upon the execution of this CONSENT or the ASSESSMENT, or the payment of any civil money penalty herein or therein;
- c. Any claim that this CONSENT, the ASSESSMENT or the civil money penalty is unlawful or invalid, or violates the Constitution of the United States of America; and,
- d. All rights to seek in any way to contest the validity of this CONSENT, the ASSESSMENT, or payment of the civil money penalty, on any grounds.


Artichoke Joe's d/b/a Artichoke Joe's Casino


Dennis Sammut
Artichoke Joe's


Date

Accepted by:


Kenneth A. Blanco
Director, Financial Crimes Enforcement Network
U.S. Department of the Treasury


Date

DECLARATION OF SERVICE BY E-MAIL ONLY

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for the electronic service and in accordance with that practice, on February 11, 2021, I served the attached **SECOND AMENDED ACCUSATION AND STATEMENT OF ISSUES (Replacing the Amended Accusation and Statement of Issues filed December 8, 2020)** by transmitting a true copy via electronic mail addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 11, 2021, at Sacramento, California.

PAULA CORRAL
Declarant

Paula Corral
Signature