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CALIFORNIA GAMBLING  
CONTROL COMMISSION

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

13  
14 **In the Matter of the Statement of Reasons  
Against:**

BGC Case No. HQ2015-00004SL  
CGCC Case No.: CGCC-2015-0122-3B

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

**STATEMENT OF REASONS**

19 **LICENSE NUMBER GEGE-001276**

20 **Respondent.**

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1 Complainant alleges as follows:

2 **PARTIES**

3 1. Wayne J. Quint, Jr. (Complainant) brings this Statement of Reasons solely in his  
4 official capacity as the Chief of the California Department of Justice, Bureau of Gambling  
5 Control (Bureau).

6 2. On or about May 13, 2014, Terry Vargas (Respondent), doing business as Poker Flats  
7 Casino, submitted an Application for State Gambling License (Application), with the Bureau for  
8 renewal of her license.

9 3. At its July 24, 2014 meeting, the California Gambling Control Commission  
10 (Commission) considered the Application and extended the license six months to January 31,  
11 2015, subject to six conditions that are listed on the license.

12 4. At its January 22, 2015 meeting, the Commission considered the Application further  
13 and issued an interim renewal license valid from February 1, 2015 to January 31, 2017, subject to  
14 six conditions that are listed on the license.

15 5. At its January 22, 2015 meeting, the Commission also referred consideration of the  
16 license renewal to an evidentiary hearing.

17 6. On or about February 11, 2015, Respondent submitted a timely Notice of Defense.

18 7. On or about May 28, 2015, the Commission's Executive Director set the matter for a  
19 hearing to be conducted pursuant to the provisions of Business and Professions Code sections  
20 19870 and 19871.

21 **FIRST CAUSE FOR DENIAL**

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

23 8. Respondent's Application is subject to denial pursuant to Business and Professions  
24 Code section 19857. Respondent has violated the conditions placed upon her licensure.  
25 Respondent's extended and interim renewal license was issued upon six conditions intended to  
26 ensure her compliance with financial recordkeeping, reporting, and licensing requirements.  
27 Respondent has violated the following conditions:

1 a. Condition number one requires that by September 30, 2014, "the owner-  
2 licensee [Respondent] shall provide the Bureau documentation indicating that [she has established  
3 and maintains] a separate, specifically designated, insured account with a licensed financial  
4 institution in an amount not less than the total value of the chips-in-use by the gaming  
5 establishment." Respondent did not provide any documents to the Bureau by the specified date.  
6 To date, Respondent has not provided documents indicating compliance with the requirement.  
7 Condition number one provided for an alternative form of compliance by allowing Respondent to  
8 provide to the Bureau by September 30, 2014, "some other form of security acceptable to the  
9 Bureau, in lieu of maintaining the required account." To date, Respondent has not provided any  
10 such documents to the Bureau.

11 b. Condition number two requires that starting with the quarter ending on June 30,  
12 2014, "the owner-licensee [Respondent] shall maintain for the Bureau's review the following  
13 documents:

- 14 • The jackpot records for the previous quarter
- 15 • The daily count sheets for the previous quarter"

16 A site visit by the Bureau on October 16, 2014, confirmed that Respondent had not  
17 maintained the records for the Bureau's review, as required by condition number two.

18 c. Condition number three requires that starting with the quarter ending on  
19 September 30, 2014, Respondent shall submit to the Bureau, no later than 15 days from the  
20 quarter's close, quarterly balance sheets and profit and loss statements. In addition, condition  
21 number three requires Respondent to submit the following documents to the Bureau by  
22 September 30, 2014:

23 i. A letter to the Bureau from their accountant confirming that changes have  
24 been made to the record keeping system and that financial statements can be generated to the  
25 satisfaction of the Bureau;

26 ii. Balance sheets and profit and loss statements for the periods between  
27 January 1, 2012 and December 31, 2013;

28 iii. Federal tax returns for the years 2012 and 2013; and



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

4 b. Respondent has failed to submit financial documents covering all financial  
5 activities of Respondent's gambling operation for the 2012 and 2013 fiscal years, as required by  
6 California Code of Regulations, title 4, section 12403.

7 (Bus. & Prof. Code, §§ 19857, 19920 & 19922; Cal. Code Regs., tit. 4, § 12403, and tit. 11, §  
8 2053.)

9 **THIRD CAUSE FOR DENIAL**

10 **(Letters of Warning for Failure to Comply with Statutory and Regulatory Requirements)**

11 10. Respondent's Application is subject to denial pursuant to Business and Professions  
12 Code section 19857. In addition to the violation of the conditions placed upon her interim  
13 renewal license, as alleged in paragraph 8, and incorporated herein by reference, and failure to  
14 comply with the Act, and the regulations thereunder, as alleged in paragraph 9, and incorporated  
15 herein by reference, Respondent has received multiple letters of warning for violations of the Act,  
16 and the regulations thereunder. More specifically, Respondent has received the following letters  
17 of warning:

18 a. The Bureau issued a letter of warning to Respondent on July 11, 2014, for  
19 failure to maintain a separate, specifically designated, insured bank account in an amount not less  
20 than the total value of the chips in use, a violation of California Code of Regulations, title 11,  
21 section 2053.

22 b. The Bureau issued a letter of warning to Respondent on July 11, 2014, for  
23 failure to submit financial documents covering all financial activities of Respondent's gambling  
24 operation, a violation of California Code of Regulations, title 4, section 12403 for the 2012 and  
25 2013 fiscal years, and again on February 3, 2015, for the 2013 fiscal year.

26 c. Respondent was issued a letter of warning on May 13, 2015, for failure to pay  
27 annual fees to the Gambling Addiction Program Fund, as required by Business and Professions  
28 Code section 19954.



1 chapter,<sup>[1]</sup> including, without limitation, the power to do all of the  
2 following:

3 \* \* \*

4 (b) For any cause deemed reasonable by the commission  
5 . . . Limit, condition, or restrict any license, permit, or approval, or  
6 impose any fine upon any person licensed or approved. The commission  
7 may condition, restrict, discipline, or take action against the license of an  
8 individual owner endorsed on the license certificate of the gambling  
9 enterprise whether or not the commission takes action against the license  
10 of the gambling enterprise.

11 \* \* \*

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

15 14. Business and Professions Code, section 19870 provides:

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

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

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

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

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

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<sup>1</sup> Hereinafter, "chapter" refers to Business and Professions Code, division 8, chapter 5,  
(commencing with section 19800), also known as the Gambling Control Act.

1 15. Business and Professions Code, section 19871 provides:

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

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

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

8 (A) To call and examine witnesses.

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

11 (C) To cross-examine opposing witnesses  
12 on any matters relevant to the issues, even though  
13 the matter was not covered on direct examination.

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

16 (E) To offer rebuttal evidence.

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

20 (4) The meeting need not be conducted according to  
21 technical rules relating to evidence and witnesses. Any relevant  
22 evidence may be considered, and is sufficient in itself to support a  
23 finding, if it is the sort of evidence on which responsible persons are  
24 accustomed to rely in the conduct of serious affairs, regardless of the  
25 existence of any common law or statutory rule that might make  
26 improper the admission of that evidence over objection in a civil  
27 action.

28 (b) Nothing in this section confers upon an applicant a right  
to discovery of the department's<sup>2</sup> investigative reports or to require  
disclosure of any document or information the disclosure of which is  
otherwise prohibited by any other provision of this chapter.

#### SPECIFIC STATUTORY PROVISIONS

16. Business and Professions Code section 19856, subdivision (a) provides, in part:

The burden of proving his or her qualifications to receive any license  
is on the applicant.

<sup>2</sup> "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.  
(h).)



1 17. Business and Professions Code, section 19857 provides:

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

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

6 (b) A person whose prior activities, criminal record, if any,  
7 reputation, habits, and associations do not pose a threat to the public  
8 interest of this state, or to the effective regulation and control of  
9 controlled gambling, or create or enhance the dangers of unsuitable,  
10 unfair, or illegal practices, methods, and activities in the conduct of  
11 controlled gambling, or in the carrying on of the business and financial  
12 arrangements incidental thereto.

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

15 18. Business and Professions Code, section 19875 provides:

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

20 19. Business and Professions Code, section 19920 provides:

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

20. 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.

21. Business and Professions Code, section 19954 provides:

In addition to those fees required pursuant to Section 19951, each  
licensee shall pay an additional one hundred dollars (\$100) for each table  
for which it is licensed to the State Department of Public Health for

1 deposit in the Gambling Addiction Program Fund, which is hereby  
2 established to benefit those who have a gambling addiction problem.  
3 These funds shall be made available, upon appropriation by the  
4 Legislature, to community-based organizations that directly provide aid  
5 and assistance to those persons with a gambling addiction problem.

6 22. California Code of Regulations, title 4, section 12354 provides:

7 (a) An individual, if holding a valid work permit for any  
8 gambling enterprise, may immediately begin to work as an interim key  
9 employee provided that the individual submit the following to the Bureau  
10 within 10 days of hiring:

11 (1) An Application for Interim Key Employee  
12 License, BGC-035 (Rev. 04/13), which is attached in Appendix  
13 A to this chapter.

14 (2) A nonrefundable application fee pursuant to  
15 subsection (b) of Section 12008.

16 (3) A copy of the employee's valid work permit  
17 issued pursuant to section 19912 of the Business and  
18 Professions Code for any gambling enterprise.

19 (4) A two inch by two inch color passport-style  
20 photograph taken no more than 30 days before submission to  
21 the Bureau of the interim key employee application, which  
22 shall be in addition to the photograph submitted for the initial  
23 portable personal key employee license.

24 (b) Applications for issuance of an interim key employee  
25 license shall be processed within the following timeframes:

26 (1) The maximum time within which the Bureau shall  
27 notify the applicant in writing that an application or a resubmitted  
28 application is complete and accepted for filing, or that an application  
or a resubmitted application is deficient and identifying what specific  
additional information is required, is five working days after receipt  
of the application.

(2) An interim key employee license shall be either  
granted or denied within 15 working days after the filing of a  
complete application.

(c) Interim key employee license approvals are subject to  
the following conditions:

(1) An application package for an initial portable  
personal key employee license as required in subsection (c)  
of Section 12350 must be submitted to the Bureau within 30  
days of assuming a key employee position.

1 (2) An interim license shall be valid for a period  
2 of two years from the date it is issued.

3 (3) Issuance of an interim license does not  
4 obligate the Commission to issue a regular key employee  
5 license.

6 (4) Issuance of an interim license has no bearing  
7 on the question of whether the holder will qualify for  
8 issuance of any Commission permit, registration, or license.

9 (5) The interim key employee shall cease  
10 working in a key employee position if, during the term of  
11 the interim license, any of the following occurs:

12 (A) The application for key employee license is  
13 abandoned or denied.

14 (B) The interim key employee's work permit  
15 expires, is revoked, or is cancelled before the key employee  
16 license is approved.

17 (C) The Executive Director notifies the applicant  
18 and gambling enterprise that the interim status is cancelled  
19 pursuant to subsection (e), of this section.

20 (d) Upon issuance or denial of a regular key employee  
21 license by the Commission, the interim license previously issued shall  
22 become invalid and shall not be used thereafter.

23 (e) With ten day's advance written notice to the interim key  
24 employee and to the gambling enterprise, the Executive Director shall  
25 cancel the interim key employee license based upon the following:

26 (1) Evidence showing that the applicant has sustained any  
27 disqualifying criminal convictions;

28 (2) Evidence showing that the applicant is statutorily  
ineligible for a key employee license under the Act;

(3) Evidence which discloses that having the applicant  
serve as an interim key employee pending determination of their  
application may in the judgment of the Executive Director present a  
danger to the public or to the reputation of controlled gambling in  
this state;

(4) A determination by the Executive Director that the  
applicant has failed to reveal any fact that is material to, or supplied  
materially untrue or misleading information on, the applicant's key  
employee license application;

(5) A Bureau recommendation of denial of the applicant's  
key employee application;

1 (6) Referral by the Commission of the applicant to an  
2 evidentiary hearing with direction to the Executive Director to cancel  
the interim key employee status; or

3 (7) A determination by the Executive Director that the  
4 gambling enterprise using the interim key employee procedure has  
5 shown a pattern or practice of hiring or promoting persons to key  
6 employee positions in violation of subsection (a) above or that the  
gambling enterprise has acted in bad faith, with actual knowledge  
that the persons hired or promoted would be ineligible for licensure.

7 (f) Within ten days of the date of notice of a cancellation of  
8 interim status pursuant to this section, the gambling enterprise shall notify  
9 the Bureau in writing of the effective date of the position change for or  
10 suspension of the employee, and shall describe the employee's revised job  
duties, if any.

11 (g) Judicial review of a cancellation of interim status shall be  
12 by petition pursuant to section 1085 of the Code of Civil Procedure.

13 (h) This section shall apply to any individual employed in  
14 the capacity of a key employee, whether employed in a gambling  
15 establishment owned by a non-corporate licensee or by a corporate  
16 licensee, as provided in Business and Professions Code section 19883.

17 23. California Code of Regulations, title 4, section 12403 provides:

18 (a) A licensee shall prepare financial statements covering  
19 all financial activities of the licensee's gambling operation for each fiscal  
20 year, in accordance with generally accepted accounting principles unless  
21 otherwise provided in this section. If the licensee ( or a person or entity  
22 that has an interest, control, or common control with the licensee) owns  
23 or operates lodging, food, beverage, or any other non-gambling operation  
24 at the establishment, the financial statements must reflect the results of  
25 the gambling operation separately from those non-gambling operations.

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

(2) A Group II licensee shall engage an  
independent accountant licensed by the California Board of  
Accountancy to review the licensee's annual financial  
statements in accordance with standards for accounting and  
review services or with currently applicable professional  
accounting standards. The Bureau or Commission may  
require the licensee, or 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, if

there are concerns about the licensee's operation or financial

1 reporting, including but not limited to:

- 2 (A) Inadequate internal control procedures;
- 3 (B) Insufficient financial disclosure;
- 4 (C) Material misstatement in financial reporting;
- 5 (D) Inadequate maintenance of financial data; or
- 6 (E) Irregularities noted during an investigation.

7 (3) A Group III licensee with a gross revenue of  
8 \$500,000 or more per year shall prepare financial statements  
9 including at a minimum a statement of financial position, a  
10 statement of income or statement of operations, and  
11 disclosure in the form of notes to the financial statements. If  
12 the licensee is unable to produce the financial statements, it  
13 shall engage an independent accountant licensed by the  
14 California Board of Accountancy to perform a compilation  
15 of the licensee's annual financial statements in accordance  
16 with standards for accounting and review services or with  
17 currently applicable professional accounting standards,  
including full disclosure in the form of notes to the financial  
statements. The Bureau or Commission may require the  
licensee, or the licensee may elect, to engage an independent  
accountant licensed by the California Board of Accountancy  
to compile or review the licensee's financial statements in  
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:

- 18 (A) Inadequate internal control procedures;
- 19 (B) Insufficient financial disclosure;
- 20 (C) Material misstatement in financial reporting;
- 21 (D) Inadequate maintenance of financial data; or
- 22 (E) Irregularities noted during an investigation.

23 (4) (A) A Group III licensee with a gross  
24 revenue of less than \$500,000 per year shall prepare  
25 financial statements that include, at a minimum, a statement  
26 of financial position and a statement of income or statement  
27 of operations. If the licensee is unable to produce the  
28 financial statements, it shall do one of the following:

- 1. 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

1 accounting and review services or with currently  
2 applicable professional accounting standards and  
3 management may elect not to provide footnote  
disclosures as would otherwise be required by  
generally accepted accounting principles.

4 2. Submit to the Bureau no later than 120  
5 calendar days following the end of the year covered by the  
6 federal income tax return, copies of the licensee's 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.

7 (B) The Bureau or Commission may require the licensee,  
8 or the licensee may elect, to engage an independent accountant  
9 licensed by the California Board of Accountancy to compile or  
10 review the licensee's financial statements in accordance with  
standards for accounting and review services, or to audit the financial  
statements in accordance with generally accepted auditing standards,  
11 if there are concerns about the licensee's operation or financial  
reporting, including but not limited to:

- 12 1. Inadequate internal control procedures;
- 13 2. Insufficient financial disclosure;
- 14 3. Material misstatement in financial reporting;
- 15 4. Inadequate maintenance of financial data; or
- 16 5. Irregularities noted during an investigation.

17 (b) Unless otherwise provided in this section, a licensee  
18 shall submit copies of the annual financial statements, with the  
independent auditor's or accountant's report issued to meet the  
19 requirements under this section, to the Bureau no later than 120 calendar  
20 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.

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

24 (d) The Bureau or Commission may require the licensee to  
engage an independent accountant licensed by the California Board of  
25 Accountancy to perform a fraud audit in the event that fraud or illegal  
acts are suspected.<sup>3</sup>

26  
27 <sup>3</sup> Section 12403 has been repealed, effective July 1, 2015. The quoted text of former  
28 Section 12403 is as it appeared during all relevant times herein.

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

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

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

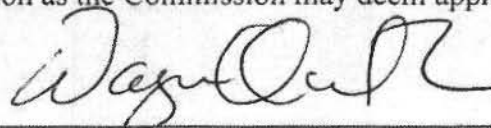
14 (c) A gambling establishment shall maintain a separate,  
15 specifically designated, insured account with a licensed financial  
16 institution in an amount not less than the total amount of the monies that  
17 patrons of that gambling establishment have on deposit with the gambling  
18 establishment. The funds from that account may only be used to return to  
19 the patrons the balance of monies on deposit with the gambling  
20 establishment. That account may not be used as collateral, or  
21 encumbered or hypothecated in any fashion. Alternatively, the Bureau  
22 may allow the gambling establishment to provide some other form of  
23 security acceptable to the Bureau, in lieu of maintaining the required  
24 account.

25 **PRAYER**

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

- 28 1. Denying Respondent's Application; and  
2. Taking such other and further action as the Commission may deem appropriate.

29 Dated: March 3, 2016



30 WAYNE J. QUINT, JR., Chief  
31 Bureau of Gambling Control  
32 California Department of Justice