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4 **STATE OF NEVADA**
5 **BEFORE THE NEVADA GAMING COMMISSION**

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7 STATE GAMING CONTROL BOARD,)
8 Complainant,)
9 vs.)
10 KRS ENTERPRISES, INC.,)
11 dba FRED'S TAVERN 2)
12 and)
13 KURT L. SCHOEN,)
14 Respondents.)

COMPLAINT

15 The State of Nevada, on relation of its State Gaming Control Board (BOARD),
16 Complainant herein, by and through its counsel, CATHERINE CORTEZ MASTO, Attorney
17 General, and MICHAEL P. SOMPS, Senior Deputy Attorney General, hereby files this
18 Complaint for disciplinary action against Respondents pursuant to Nevada Revised Statute
(NRS) 463.310(2) and alleges as follows:

19 1. Complainant, BOARD, is an administrative agency of the State of Nevada duly
20 organized and existing under and by virtue of chapter 463 of NRS and is charged with the
21 administration and enforcement of the gaming laws of this state as set forth in Title 41 of NRS
22 and the Regulations of the Nevada Gaming Commission.

23 2. Respondent, KRS ENTERPRISES, INC., dba FRED'S TAVERN 2 (FRED'S), is
24 located at 4680 South Decatur Boulevard, Las Vegas, Nevada and holds a restricted gaming
25 license in Nevada. Respondent, KURT L. SCHOEN, is licensed as the majority shareholder
26 of FRED'S and is licensed as FRED'S President, Secretary, Treasurer and Director.

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Office of the Attorney General
Gaming Division
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

RELEVANT LAW

3. The Nevada Legislature has declared under NRS 463.0129(1) that:

(a) The gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants.

(b) The continued growth and success of gaming is dependent upon public confidence and trust that licensed gaming and the manufacture, sale and distribution of gaming devices and associated equipment are conducted honestly and competitively, that establishments which hold restricted and nonrestricted licenses where gaming is conducted and where gambling devices are operated do not unduly impact the quality of life enjoyed by residents of the surrounding neighborhoods, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.

(c) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems.

NRS 463.0129(1)(a), (b) and (c).

4. The Nevada Gaming Commission has full and absolute power and authority to limit, condition, restrict, revoke or suspend any license, or fine any person licensed, for any cause deemed reasonable. See NRS 463.1405(4).

5. The BOARD is authorized to observe the conduct of licensees in order to ensure that the gaming operations are not being conducted in an unsuitable manner. See NRS 463.1405(1).

6. NRS 463.366(1) provides in relevant part that "a licensee shall pay a patron's claim within 20 days after the decision of the Board or the hearing examiner directing him to do so becomes final. Failure to pay within that time is grounds for disciplinary action pursuant to NRS 463.311 to 463.3145, inclusive."

7. This continuing obligation is repeated in Nevada Gaming Commission Regulation 5.040, which provides as follows:

A gaming license is a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder. The burden of proving his qualifications to hold any license rests at all times on the licensee. The board is charged by law with the duty of observing the conduct of all licensees to the

1 end that licenses shall not be held by unqualified or disqualified
2 persons or unsuitable persons or persons whose operations are
3 conducted in an unsuitable manner.

4 Nev. Gaming Comm'n Reg. 5.040.

5 8. Nevada Gaming Commission Regulation 5.010(2) further provides that
6 "[r]esponsibility for the employment and maintenance of suitable methods of operation rests
7 with the licensee, and willful or persistent use or toleration of methods of operation deemed
8 unsuitable will constitute grounds for license revocation or other disciplinary action."

9 9. Nevada Gaming Commission Regulation 5.011 states, in relevant part, as follows:

10 The board and the commission deem any activity on the
11 part of any licensee, his agents or employees, that is inimical to the
12 public health, safety, morals, good order and general welfare of the
13 people of the State of Nevada, or that would reflect or tend to
14 reflect discredit upon the State of Nevada or the gaming industry,
15 to be an unsuitable method of operation and shall be grounds for
16 disciplinary action by the board and the commission in accordance
17 with the Nevada Gaming Control Act and the regulations of the
18 board and the commission. Without limiting the generality of the
19 foregoing, the following acts or omissions may be determined to be
20 unsuitable methods of operation:

1. Failure to exercise discretion and sound judgment to
prevent incidents which might reflect on the repute of the State of
Nevada and act as a detriment to the development of the industry.

.....

8. Failure to comply with or make provision for compliance
with all federal, state and local laws and regulations pertaining to
the operations of a licensed establishment . . .

.....

21 Nev. Gaming Comm'n Regs. 5.011(1), and (8).

22 10. Nevada Gaming Commission Regulation 5.030 provides as follows:

23 ***Violation of any provision of the Nevada Gaming***
24 ***Control Act or of these regulations by a licensee***, his agent or
25 employee ***shall be deemed*** contrary to the public health, safety,
26 morals, good order and general welfare of the inhabitants of the
27 State of Nevada and ***grounds for suspension or revocation of a***
28 ***license***. Acceptance of a state gaming license or renewal thereof
by a licensee constitutes an agreement on the part of the licensee
to be bound by all of the regulations of the commission as the
same now are or may hereafter be amended or promulgated. ***It is***
the responsibility of the licensee to keep himself informed of

1 ***the content of all such regulations, and ignorance thereof will***
2 ***not excuse violations.***

3 Nev. Gaming Comm'n Reg. 5.030 (emphasis added).

4 11. NRS 463.310(4)(d)(2) states in relevant part that the Commission may:

5 (d) Fine each person or entity or both, who was licensed,
6 registered or found suitable pursuant to this chapter or chapter 464
7 of NRS or who previously obtained approval for any act or
8 transaction for which Commission approval was required or
9 permitted under the provisions of this chapter or chapter 464 of
10 NRS:

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12 (2) Except as otherwise provided in subparagraph (1) of
13 this paragraph, not more than \$100,000 for each separate violation
14 of the provisions of this chapter or chapter 464 or 465 of NRS or of
15 the regulations of the Commission which is the subject of an initial
16 complaint and not more than \$250,000 for each separate violation
17 of the provisions of this chapter or chapter 464 or 465 of NRS or of
18 the regulations of the Commission which is the subject of any
19 subsequent complaint.

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21 NRS 463.310(4)(d)(2).

22 **BACKGROUND**

23 12. A hearing was conducted by the BOARD pursuant to NRS 463.363 to resolve a
24 promotion dispute between FRED'S and Michael Pascarella who was a patron of FRED'S.

25 13. As a result of the BOARD hearing, FRED'S was ordered on March 5, 2009 to pay
26 Mr. Pascarella \$300.00.

27 14. On March 5, 2009, the BOARD notified FRED'S of the BOARD'S March 5, 2009
28 order concerning the outcome of the patron dispute and that FRED'S was required to pay Mr.
29 Pascarella \$300 within 20 days.

30 15. In June 2009, the BOARD's hearing examiner learned that Mr. Pascarella had not
31 received the \$300 from FRED'S as required by the BOARD'S March 5, 2009 order. The
32 BOARD'S hearing examiner contacted FRED'S Operations Manager and was told by the
33 Operations Manager that the check had been issued and sent to Mr. Pascarella.

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1 16. On or about July 10, 2009, because Mr. Pascarella had still not received the \$300,
2 the BOARD'S hearing examiner contacted FRED'S Operations Manager and instructed him to
3 stop payment on the issued check, issue a new check, and deliver it to the BOARD'S hearing
4 examiner.

5 17. As of August 13, 2009, neither Mr. Pascarella nor the BOARD'S hearing officer
6 had received the \$300.

7 18. The BOARD'S hearing examiner referred the matter to the BOARD'S Enforcement
8 Division.

9 19. On August 14, 2009, a BOARD Enforcement Division agent contacted FRED'S
10 Operations Manager and was told by the Operations Manager that Mr. Schoen had issued a
11 check and that the Operations Manager had mailed the check.

12 20. On August 14, 2009, FRED'S Operations Manager delivered to the BOARD a
13 check for payment of \$300 to Mr. Pascarella.

14 21. FRED'S did not issue or send a check to Mr. Pascarella as initially represented by
15 FRED'S Operations Manager in June 2009 and again on August 14, 2009.

16 **COUNT ONE**

17 **NRS 463.366(1) and NEV. GAMING COMM'N REGS. 5.011(1) and 5.011(8)**

18 22. Complainant BOARD realleges and incorporates by reference as though set forth
19 in full herein paragraphs 1 through 21 above.

20 23. Respondents did not pay a patron's, Michael Pascarella's, claim within 20 days of
21 the BOARD directing it to do so through the BOARD'S March 5, 2009 order in violation of
22 NRS 463.366(1).

23 24. Respondents' failure to comply with NRS 463.366(1) constitutes a failure to
24 exercise discretion and sound judgment to prevent incidents which might reflect on the repute
25 of the State of Nevada and act as a detriment to the development of the industry in violation of
26 Nev. Gaming Comm'n Reg. 5.011(1).

27 25. Respondents' failure to comply with NRS 463.366(1) constitutes a failure to comply
28 with or make provision for compliance with all federal, state and local laws and regulations

1 pertaining to the operations of a licensed establishment in violation of Nev. Gaming Comm'n
2 Reg. 5.011(8).

3 26. Respondents' failure to comply with NRS 463.366(1) and Nev. Gaming Comm'n
4 Regs. 5.011(1) and 5.011(8) is an unsuitable method of operation and is grounds for
5 disciplinary action. See Nev. Gaming Comm'n Regs. 5.010(2) and 5.030.

6 WHEREFORE, based upon the allegations contained herein which constitute
7 reasonable cause for disciplinary action against Respondents, pursuant to NRS 463.310, and
8 Nevada Gaming Commission Regulations 5.010, 5.011 and 5.030 the STATE GAMING
9 CONTROL BOARD prays for the relief as follows:

10 1. That the Nevada Gaming Commission serve a copy of this Complaint on the
11 Respondents pursuant to NRS 463.312(2);

12 2. That the Nevada Gaming Commission fine Respondents a monetary sum pursuant
13 to the parameters defined at NRS 463.310(4) for each separate violation of the provisions of
14 the Nevada Gaming Control Act or the Regulations of the Nevada Gaming Commission;

15 3. That the Nevada Gaming Commission take action against Respondents' license or
16 licenses pursuant to the parameters defined in NRS 463.310(4); and

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1 4. For such other and further relief as the Nevada Gaming Commission may deem just
2 and proper.

3 DATED this 6th day of April, 2010.

4 STATE GAMING CONTROL BOARD

5 
6 DENNIS K. NEILANDER, Chairman

7 
8 RANDALL E. SAYRE, Member

9 
10 MARK A. LIPPARELLI, Member

11 Submitted by:

12 CATHERINE CORTEZ MASTO
13 Attorney General

14 By: 
15 MICHAEL P. SOMPS
16 Senior Deputy Attorney General
17 Gaming Division
18 (775) 850-4152