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**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
 MONTANA STATE AUDITOR**

IN THE MATTER OF)	CASE NO.: SEC 2016-195
)	
)	
JOHN HERMANSEN, POKER JUNKIES PRODUCTION, LLC; and GAWK INC.,)	NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING
)	
Respondents)	
)	

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101 et seq. (the Act), is proposing to the Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner), that she take specific action against John Hermansen (Hermansen); Poker Junkies Production, LLC (Poker Junkies); and Gawk, Inc. (Gawk) (collectively, Respondents) for violations of the Act.

REASONS FOR ACTION

There is reasonable cause to believe that the following facts will be proven true and justify disciplinary action against Respondents, including a fine not to exceed \$5,000 per violation. The Commissioner has authority to take such action under the provisions of §§ 30-10-102, 30-10-107, 30-10-301, 30-10-304, 30-10-305, and 30-10-309.

ALLEGATIONS OF FACT

1. Hermansen is the owner of Poker Junkies. He is not now nor has he ever been licensed to offer or sell securities in Montana.
2. Poker Junkies is a now-inactive limited liability company formerly operated by Hermansen. According to Hermansen, the assets of the company have been disposed of.
3. On or about January 14, 2011, Montana resident B L. signed and issued a check to Poker Junkies in the amount of \$10,000. The memorandum line of the check references "1 unit" in Poker Junkies.
4. On January 24, 2011, B L. signed and issued a check to Poker Junkies in the amount of \$400. The memorandum line of the check references "[M.L.] IRA pymt." M L. is the wife of B L.
5. On March 31, 2011, a check was issued from a Sun West Trust custodial account f/b/o B.L. and/or M.L. to Poker Junkies in the amount of \$22,000.
6. On or about March 31, 2011, B.L. signed a subscription agreement for a one-half unit in Poker Junkies, for the amount of \$25,000. Hermansen signed the subscription agreement as Manager of Poker Junkies. As annotated in the subscription agreement, the March 31 payment and \$3,000 of the January 24 payment constituted the \$25,000 subscription agreement investment.
7. On or about June 27, 2011, Montana resident M.L. wire transferred \$25,000 to Poker Junkies.
8. On or about June 30, 2011, B.L. and/or M.L. signed a subscription agreement for one-half unit in Poker Junkies for the amount of \$25,000. Hermansen again signed the subscription agreement as Manager of Poker Junkies.

9. In the course of its investigation, the CSI received copies of restricted stock certificates, each for one-half unit of Poker Junkies, f/b/o B.L., and B.L. and M.L., respectively. The certificates were dated June 3, 2011, and August 5, 2011.

10. On November 14, 2013, the assets of Poker Junkies were sold to Gawk for \$20 million in Gawk common stock. In or about November of 2013, Gawk informed B.L. and M.L. that the assets of Poker Junkies had been converted for common stock in Gawk

11. On November 19, 2013, Gawk appointed Hermansen a member of its board of directors, Chief Content Officer, and Secretary.

12. On December 23, 2013, B.L. and M.L. signed and issued a check of \$49,000 to Gawk as an additional investment. B.L. and M.L. subsequently received a stock certificate for 490,000 shares of Gawk

13. On February 15, 2011, the Colorado Securities Commission issued a cease and desist order, case no. XY-11-CD-008, against Poker Junkies and Hermansen. The order prohibited the parties from selling or offering to sell securities in violation of Colorado securities law.

14. According to Gawk's Edgar filing with the Securities and Exchange Commission (SEC), on May 13, 2014, Hermansen was removed as a director and officer of Gawk for failing to disclose the Colorado cease and desist order as required under 14 CFR § 229.401(f)(5). Gawk also disclosed that Hermansen and a colleague had made unauthorized withdrawals of corporate funds.

15. Neither Hermansen nor Gawk notified B.L. and M.L. at any time prior to or during the transactions that Hermansen was the subject of the Colorado cease and desist order for violations of Colorado securities law. Moreover, Gawk did not notify the CSI about the aforementioned actions at any point.

16. In December 16, 2013, one week before B.L. and M.L. purchased additional shares of Gawk, Gawk filed a 10-Q quarterly report with the SEC for the period ending October 31, 2013. In that filing, Gawk disclosed a nine-month net loss of \$164,013 and an accumulated deficit of \$188,984. The report noted, "These factors raise doubt about the Company's ability to continue as a going concern." Neither Gawk nor Hermansen disclosed to B.L. or M.L. Gawk's hazardous financial situation prior to their investment in Gawk

17. None of the Respondents provided B.L. or M.L. with a prospectus or other sufficient disclosure of financial and other information needed to make an educated investment, such as is typically found in a prospectus, prior to or at the time of any of the transactions referenced above.

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities and Insurance (Commissioner) pursuant to §§ 30-10-107, 2-15-1901, and 2-15-1903.
2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-301, 30-10-304, 30-10-305, and 30-10-307.
3. The Commissioner administers the Act, pursuant to §§ 2-15-1901 and 30-10-107.
4. The Commissioner shall administer the Act to protect the investor, persons engaged in securities transactions, and the public interest, pursuant to § 30-10-102(1).
5. At all times relevant to this action, none of Respondents were registered salespersons or broker-dealers in Montana
6. A person may not, in connection with the offer or sale of a security in or into Montana, omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. § 30-10-301(1)(b)

7. Respondents violated § 30-10-301(1)(b) when, in connection with the Gawk transactions, they failed to disclose to B.L. and M.L. that:

- a. Gawk was in a financial condition so adverse as to raise concerns regarding its ability to continue to operate as a going concern; and
- b. Poker Junkies and Hermansen were subject to the 2011 Colorado cease and desist order for securities violations.

8. Respondents Hermansen and Poker Junkies violated § 30-10-301(1)(b) when, in connection with the Poker Junkies transaction for which a stock certificate was issued on August 5, 2011, they failed to disclose to B.L. and M.L. that Poker Junkies and Hermansen were subject to the 2011 Colorado cease and desist order for securities violations

9. A person may not, in connection with the offer or sale of a security in or into Montana, engage in any act, practice, or course of business that operates or would operate as a fraud or deceit under any person. § 30-10-301(1)(c).

10. For purposes of § 30-10-301, “fraudulent and unethical practices” are further defined by Administrative Rule of Montana 6.10.401. Rule 6.10.401(1)(j) identifies as a fraudulent and unethical practice the failure to provide a prospectus no later than the date of confirmation of a transaction.

11. Respondents violated Admin. R. Mont. 6.10 401(1)(j) when they failed to provide prospectuses in connection with the Gawk transactions

12. Respondents Hermansen and Poker Junkies violated Admin. R. Mont. 6.10.401(1)(j) when they failed to provide a prospectus in connection with the Poker Junkies transaction for which a stock certificate was issued on August 5, 2011.

13. Administrative Rule of Montana 6.10.401(1)(u) identifies as a fraudulent and unethical practice conduct constituting nondisclosure, incomplete disclosure, or misstatement of material facts.

14. Respondents violated Admin. R. Mont. 6.10 401(1)(u) when they failed to disclose to B.L. and M.L. that:

- a. Gawk was in a financial condition so adverse as to raise concerns regarding its ability to continue to operate as a going concern; and
- b. Poker Junkies and Hermansen were subject to the 2011 Colorado cease and desist order for securities violations.

15. Respondents Hermansen and Poker Junkies violated Admin. R. Mont. 6.10.401(1)(u) when, in connection with the Poker Junkies transaction for which a stock certificate was issued on August 5, 2011, they failed to disclose to B.L. and M.L. that Poker Junkies and Hermansen were subject to the 2011 Colorado cease and desist order for securities violations.

RELIEF REQUESTED

WHEREFORE, the CSI seeks the following relief:

1. That the Commissioner fine each Respondent in an amount not to exceed \$5,000 for each identifiable violation of the Act, pursuant to § 30-10-305.
2. That the Commissioner order payment of restitution plus statutory interest pursuant to § 30-10-309.
3. Such other relief as the Commissioner deems necessary and appropriate.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney

at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by **writing** to Nick Mazanec, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within a reasonable period of time unless postponed by mutual consent of the parties.

You have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.* (1973), 164 Mont. 139, 520 P.2d 103, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P 3d 200.

CONTACT WITH COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Nick Mazanec, Attorney for the CSI, by telephone at (406) 444-2040, or by email at nmazanec@mt.gov. If an attorney represents you, please make any contacts with the CSI through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within 21 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 5th day of August, 2016.



NICK MAZANEC
Attorney for the CSI