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10 BEFORE THE
11 CALIFORNIA GAMBLING CONTROL COMMISSION
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15 **IN THE MATTER OF THE STATEMENT OF**
ISSUES AGAINST:

16
17 **MARCOS CABRERA (EL RESBALON),**
18
19
20 **RESPONDENT.**
21

Case No. **CGCC # 2006-11-10**

OAH No. N/A

DEFAULT DECISION
AND ORDER

22
23 **FINDINGS OF FACT**

24 1. On or about November 21, 2008, Complainant Terresa A. Ciau, in her official
25 capacity as the Executive Director of the California Gambling Control Commission
26 (Commission), filed Statement of Issues No. CGCC # 2006-11-10 against Marcos Cabrera
27 (Respondent).
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2. On or about February 1, 2006, the Commission received a State Gambling License Renewal application (Application) from Respondent for the operation of a gambling establishment known as "El Resbalon" located at 154 N. Valencia in Woodlake, California.

3. On or about October 30, 2006, the Commission notified Respondent that Commission staff had recommended that Respondent's application for license renewal be denied, and that the matter would be heard at the Commission's meeting on November 16, 2006.

4. The matter of Respondent's application for license renewal was heard at the Commission's meeting on November 16, 2006, at which time Respondent's son, Javier Cabrera (a designated agent), spoke on behalf of Respondent and requested that the Commission grant a hearing on the denial of Respondent's application for license renewal. The Commission then referred this matter to its counsel for preparation and service of a Statement of Issues.

5. On or about November 20, 2008, the Office of the Attorney General, as counsel for the Complainant, served by Certified Mail a copy of Statement of Issues No. CGCC #2006-11-10, Statement to Respondent, two copies of the Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6 and 11507.7, upon Respondent at the business address of the gambling establishment known as El Resbalon. A copy of the Statement of Issues, the related documents, and Declaration of Service are attached hereto as Exhibit A, and are incorporated herein by this reference.

6. On December 11, 2008, Respondent received the documents described in paragraph 5, above. A copy of the United States Postal Service return receipt bearing the signature of Respondent is attached hereto as Exhibit B, and is incorporated herein by this reference.

7. Pursuant to Government Code section 11506, subdivision (a), Respondent was required to file with the Commission by no later than 15 days after the date of service of the documents described in paragraph 5, above, a Notice of Defense by way of a response to the Statement of Issues that was served upon him on December 11, 2008. As of the date of this Default Decision and Order, neither the Commission, nor the Office of the Attorney General, has received the Notice of Defense or any other communication from Respondent.

1 8. Government Code section 11520 provides, in part:

2 (a) If the respondent either fails to file a notice of defense or to appear
3 at the hearing, the agency may take action based upon the respondent's
4 express admissions or upon other evidence and affidavits may be used as
5 evidence without any notice to respondent; and where the burden of proof
6 is on the respondent to establish that respondent is entitled to the agency
7 action sought, the agency may act without taking evidence.

8 9. By virtue of the facts set forth in paragraph 7, Respondent is in default and action
9 pursuant to Government Code section 11520 is appropriate. Because in this proceeding the
10 burden of proof is on the Respondent to establish that Respondent is entitled to licensure, the
11 Commission hereby determines to act upon the application for licensure without taking evidence.
12 The Commission accordingly finds that the allegations, and each of them, in Statement of Issues
13 No. CGCC #2006-11-10 are true.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, the application of Respondent Marcos
16 Cabrera for renewal of his state gambling license is subject to denial.

17 2. Service of Statement of Issues No. CGCC #2006-11-10 and related documents was
18 proper and in accordance with the law.

19 3. The agency has jurisdiction to adjudicate this case by default.

20 4. The Commission is authorized to deny Respondent's application for renewal of state
21 gambling license upon the following facts alleged in the Statement of Issues:

22 a. Respondent has failed to provide requested information, documentation, and
23 payment to the Commission, despite the Commission's repeated requests that he do so, as alleged
24 in paragraphs 6, 7, and 8 of the Statement of Issues; and

25 b. Respondent has failed to clearly establish his eligibility and qualifications in
26 accordance with the Gambling Control Act.

27 ORDER

28 IT IS ORDERED that the application of Respondent Marcos Cabrera be, and the same
hereby is, denied.

1 IT IS FURTHER ORDERED that Respondent Marcos Cabrera pay to the California
2 Department of Justice, Bureau of Gambling Control (Bureau), the sum of five-hundred-two
3 dollars and fifty cents (\$502.50) as and for unpaid costs of investigation pursuant to Business and
4 Professions Code section 19867. The Bureau's statement reflecting said costs is attached hereto
5 as Exhibit C.

6 Pursuant to Government Code section 11520, subdivision (c), Respondent may, within
7 seven days after service of the Decision on Respondent, serve a written motion requesting that the
8 Default Decision and Order be vacated, stating the grounds relied on, and showing good cause,
9 which includes, but is not limited to: (a) failure of the person to receive notice served pursuant to
10 section 11505; (b) mistake, inadvertence, surprise, or excusable neglect. **Respondent is**
11 **specifically advised that if Respondent's failure to file a Notice of Defense in this matter in**
12 **response to the Statement of Issues was based upon Respondent's reliance upon**
13 **Government Code section 11504, and belief that a Notice of Defense was not required to**
14 **preserve Respondent's right to a hearing, such reliance and belief shall be deemed good**
15 **cause for the Commission to vacate this Default Decision and Order and to set this matter**
16 **for hearing.** The written motion shall be sent to the California Gambling Control Commission,
17 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231. The Commission in its
18 discretion may vacate the Default Decision and Order and grant a hearing.

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20 IT IS SO ORDERED as the decision of the California Gambling Control Commission,
21 and pursuant to the concurring votes of Commissioner Shimazu, Commissioner Vuksich
22 and Chairman Shelton, this Default Decision and Order is hereby APPROVED.

23 Dated: 9/19/09

24 This Default Decision and Order shall become effective on _____

25 Certified By:

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27 DEAN SHELTON, Chairman
28 CALIFORNIA GAMBLING CONTROL COMMISSION