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

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13
14 **In the Matter of the Second Amended
Accusation and Statement of Issues Against:**

15 **MICHAEL A. WHITELEY, JR. (GEOW-
16 002034), sole proprietor, doing business as:
17 MIKE'S CARD CASINO (GEGE-000811);**

18 824 North Yosemite Avenue
Oakdale, California 95361

19
20 **Respondent.**

OAH No. 2016070163

BGC Case No. BGC- HQ2016-00001AC

**STIPULATED SETTLEMENT;
DECISION AND ORDER**

21
22 **STIPULATED SETTLEMENT**

23 **PURPOSE OF THIS STIPULATED SETTLEMENT**

24 This Stipulated Settlement seeks to resolve the allegations in the Second Amended
25 Accusation and Statement of Issues (Second Amended Accusation) in this matter and the issue of
26 Michael A. Whiteley, Jr.'s (Respondent) continued suitability to hold a state gambling license.
27 The Second Amended Accusation that was filed with the Californian Gambling Control
28

1 Commission (Commission) and served on the Respondent by the California Department of
2 Justice, Bureau of Gambling Control (Bureau) sets forth the violations of, and lack of suitability
3 for continued licensure under, the Gambling Control Act (Act) (Bus. & Prof. Code, § 19800 et
4 seq.) and the regulations promulgated thereunder.

5 **PARTIES AND JURISDICTION**

6 1. Wayne J. Quint, Jr. (former complainant) brought the Accusation solely in his official
7 capacity as the then Chief of the Bureau. Nathan DaValle (Complainant) is now the Acting
8 Director of the Bureau and is acting herein solely in his official capacity.

9 2. Respondent is the sole proprietor of Mike's Card Casino, a licensed gambling
10 establishment, located at 824 North Yosemite Avenue in Oakdale, California. Respondent's
11 Owner's Gambling License number is GEOW-002034. Mike's Card Casino's License number is
12 GEGE-000811. Respondent's license expired on July 31, 2016. However, at its July 7, 2016,
13 meeting, the Commission issued Respondent an interim renewal license, which is valid through
14 July 31, 2018, or the final conclusion of the proceedings in this matter.

15 3. On May 24, 2016, Respondent was served with the original Accusation, a Statement
16 to Respondent, a Request for Discovery, copies of Government Code sections 11507.5, 11507.6
17 and 11507.7, and two copies of the Notice of Defense form. On or about July 19, 2016,
18 Respondent was served with the First Amended Accusation and Statement of Issues. On or about
19 May 16, 2017, Respondent was served with the Second Amended Accusation. Copies of all these
20 documents were also filed with the Commission at or about the time they were served on
21 Respondent.

22 4. Respondent submitted a Notice of Defense dated June 16, 2016.¹

23 **ADVISEMENT AND WAIVERS**

24 5. Respondent has carefully reviewed, and has discussed with counsel, the legal and
25 factual allegations in the Second Amended Accusation. Respondent has also carefully reviewed,
26

27 ¹ Although Respondent failed to file a timely Notice of Defense, the Bureau exercised its
28 discretion to not take action (a default) based upon Respondent's failure. (Gov. Code, § 11520.)

1 and has discussed with counsel, this Stipulated Settlement. Respondent fully understands the
2 terms and conditions contained within this Stipulated Settlement and the effects thereof.

3 6. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing before the Commission on his suitability for licensure and all the allegations in the
5 Second Amended Accusation; the right to be represented by counsel of his choice at his own
6 expense; the right to confront and cross-examine the witnesses against him; the right to present
7 evidence and testify on his own behalf; the right to the issuance of subpoenas to compel the
8 attendance of witnesses and the production of documents; the right to apply for reconsideration
9 and court review of an adverse decision; and all other rights afforded by the Act, the regulations
10 promulgated thereunder, and all other applicable laws.

11 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
12 every right set forth in paragraph 6 above, withdraws his Notice of Defense, and agrees to be
13 bound by this Stipulated Settlement.

14 **STIPULATED AGREEMENT OF SETTLEMENT**

15 8. For the purposes of resolving the allegations in the Second Amended Accusation,
16 the issue of his continued suitability for licensure, and for any other matters now and in the future
17 involving the Commission or the Bureau, Respondent knowingly and voluntarily admits that all
18 the factual and legal allegations in the Second Amended Accusation are true, accurate, and
19 complete, and that such allegations provide a sufficient legal and factual basis to revoke his
20 license and deny his license renewal.

21 9. Respondent understands and agrees that the admissions made in paragraph 8 above
22 may be entered into evidence in any legal proceeding brought or prosecuted by the Commission
23 or the Bureau, as if those admissions were made under oath and penalty of perjury.

24 10. Upon the effective date of the Decision and Order issued by the Commission
25 adopting this Stipulated Settlement, Respondent's state gambling license, number GEOW-
26 002034, shall be renewed and immediately thereafter revoked.² The revocation, however, shall

27 ² Respondent presently holds an interim renewal license. Because of the provisions of
28 California Code of Regulations, title 4, section 12035, subdivision (b)(2), the Commission has

(continued...)

1 be stayed as provided in paragraphs 11 and 12 of this Stipulated Settlement. Respondent
2 acknowledges, understands, and agrees that the stay of the revocation of his state gambling
3 license is intended solely to preserve the existence of the Mike's Card Casino license, number
4 GEGE-000811, for purposes of Business and Professions Code sections 19962 and 19963, and to
5 allow for a possible sale of 100 percent of that gambling establishment's assets. Respondent
6 acknowledges, understands, and agrees that the Commission, exercising its authority under the
7 Act, must approve the sale of the gambling establishment's assets, and the licensure of any person
8 who wishes to purchase those assets and carry on a gambling operation at the gambling
9 establishment currently know as Mike's Card Casino.

10 11. The revocation of Respondent's state gambling license shall be stayed for no longer
11 than 12 months from the effective date of the Decision and Order issued by the Commission
12 adopting this Stipulated Settlement (Stay Period). Under no circumstances shall the Stay Period
13 be lengthened or extended. However, the Stay Period shall be shortened and the stay lifted upon
14 the earlier of (i) the closing of the sale of Mike's Card Casino's assets within the Stay Period,
15 which includes obtaining both the Commission's approval of the sale of those assets and the
16 licensure of the person(s) who wishes to purchase them; or (ii) a determination by the Bureau, in
17 its discretion, that Respondent has violated any provision of the Act or the regulations
18 promulgated thereunder.

19 12. Upon the earlier of the expiration or shortening of the Stay Period, as provided for in
20 paragraph 11, the stay of the revocation of Respondent's state gambling license shall be
21 automatically and immediately lifted and Respondent's state gambling license revoked, without
22 hearing or any right to appeal. Respondent knowingly, voluntarily and expressly waives any right
23 to a hearing on such a revocation, and any right to appeal, or to contest in any manner, such a

24 _____
25 (...continued)
26 previously determined that it could not stay a denial of the renewal of a state gambling license
27 when an interim renewal license has been issued. To comply with the Commission's prior
28 directions in such cases and to effectuate the ultimate goal of this Stipulated Settlement,
Respondent's state gambling license must be renewed and then immediately revoked. There is no
prohibition on staying a revocation in the Act.

1 revocation.

2 13. Respondent also agrees to pay to the Bureau \$65,000 for the costs it incurred in
3 investigating and prosecuting this case, as well as a \$60,000 penalty for his violations of the Act,
4 as provided for in paragraphs 14 thru 16. The cost recovery shall be paid, and will be deposited,
5 in accordance with Business and Professions Code sections 19930, subdivision (f), and 19950,
6 subdivision (b). The penalty shall be paid, and will be deposited, in accordance with Business
7 and Professions Code section 19950, subdivision (a)

8 14. Should Respondent close the sale of Mike's Card Casino's assets within the Stay
9 Period for a gross sales price of \$350,000 or less, then the Bureau agrees to waive collection of
10 the \$125,000 (\$65,000 for costs and \$60,000 penalty) provided for in paragraph 13. Should
11 Respondent close the sale of the gambling establishment's assets within the Stay Period for a
12 gross sales price in excess of \$350,000 (\$350,000.01 or greater), then Respondent shall pay to the
13 Bureau the \$125,000 provided for in paragraph 13.

14 15. As part of any approved sale of Mike's Card Casino's assets for a gross sales prices
15 in excess of \$350,000, Respondent shall instruct both the purchaser and the escrow holder to pay
16 the \$125,000, provided for in paragraph 13, at the closing directly to the Bureau, which shall have
17 a lien on the proceeds of the sale for the gambling establishment.

18 16. If Respondent defaults in any way in payment of the \$125,000 provided for in
19 paragraph 13, then he expressly agrees that the Commission's Decision and Order adopting this
20 Stipulated Settlement may be presented to the Sacramento County Superior Court and, after
21 notice to Respondent and an opportunity to be heard, judgment entered thereon. Respondent
22 further agrees that the judgment shall include interest, calculated at the maximum rate allowed by
23 law to accrue from the effective date of the Commission's Decision and Order. Respondent also
24 agrees that the judgment shall include the Bureau's costs of obtaining, enforcing, and collecting
25 the judgment. Costs shall include reasonable attorney fees calculated at then-prevailing hourly
26 rates for services provided in the private sector for attorneys of comparable experience.

27 17. Respondent further expressly acknowledges, understands, and agrees that he shall
28 forever be deemed disqualified, unqualified and unsuitable for licensure, registration or

1 permitting in any capacity by the Commission, or any successor agency, commencing on the day
2 the stay is lifted and his state gambling license is revoked.

3 18. The parties agree that this Stipulated Settlement fully resolves their dispute
4 concerning the Second Amended Accusation and Respondent's suitability for licensure.

5 19. This Stipulated Settlement shall be subject to adoption by the Commission.
6 Respondent understands and specifically agrees that counsel for the Complainant, and the
7 Bureau's staff, may communicate directly with the Commission regarding this Stipulated
8 Settlement, without notice to, or participation by, Respondent or his counsel, and that no such
9 communication shall be deemed a prohibited ex parte communication. Respondent specifically
10 acknowledges and agrees that such communications are permissible pursuant to Government
11 Code section 11430.30, subdivision (b).

12 20. By signing this Stipulated Settlement, Respondent understands and agrees that he
13 may not withdraw his agreement or seek to rescind the Stipulated Settlement prior to the time the
14 Commission considers and acts upon it. If the Commission fails to adopt this Stipulated
15 Settlement as its Decision and Order, this Stipulated Settlement shall be of no force or effect, and,
16 except for actions taken pursuant to this paragraph and paragraph 19 above, it shall be
17 inadmissible in any legal action between the parties. The Commission's consideration of this
18 Stipulated Settlement shall not disqualify it from any further action regarding Respondent's
19 licensure, including, but not limited to, disposition of the Second Amended Accusation by a
20 decision and order following a hearing on the merits.

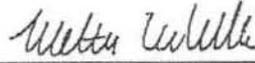
21 21. The parties agree that a photocopy, facsimile or electronic copy of this Stipulated
22 Settlement, including copies with signatures thereon, shall have the same force and effect as an
23 original.

24 22. In consideration of the above admissions and stipulations, the parties agree that the
25 Commission may, without further notice or formal proceeding, issue and enter the Decision and
26 Order adopting this Stipulated Settlement.

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COMPLAINANT'S ACCEPTANCE

Dated: November 17, 2017



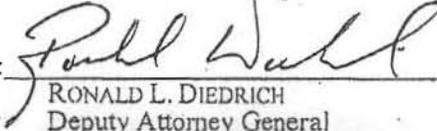
NATHAN D'VALLE, Acting Director
Bureau of Gambling Control
California Department of Justice

The foregoing Stipulated Settlement is hereby respectfully submitted for consideration by
the California Gambling Control Commission.

Dated: November 20, 2017

XAVIER BECERRA
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General

By:



RONALD L. DIEDRICH
Deputy Attorney General
Attorneys for the Complainant

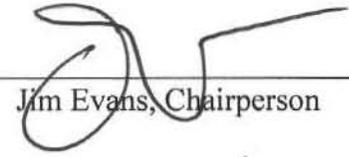
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DECISION AND ORDER OF THE COMMISSION

The California Gambling Control Commission hereby adopts the foregoing Stipulated Settlement of the parties for the case of *In the Matter of the Second Amended Accusation and Statement of Issues Against: Michael A. Whiteley, Jr. (GEOW-002034), sole proprietor, doing business as: Mike's Card Casino (GEGE-000811)*, BGC Case No. BGC- HQ2016-00001AC, OAH Case No. 2016070163, as its final Decision and Order in this matter to be effective upon execution below by its members.

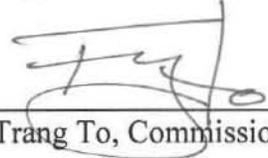
IT IS SO ORDERED

Dated: 1/25/18



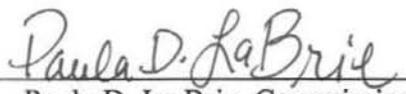
Jim Evans, Chairperson

Dated: 1/25/18



Trang To, Commissioner

Dated: 1/25/18



Paula D. La Brie, Commissioner