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BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Issues

Against:

JOSEPH FREDERICK CAPPS,

License No. TPPL-006948

CGCC Case No. CGCC-2013-0426-1

BGC Case No. BGC-HQ2015-00024SL

OAH No. 2016100308

**DECISION AND ORDER AFTER NON-ADOPTION**

**DECISION**

1. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on January 2 through 5 and 8, 2018, in Sacramento, California.<sup>1</sup> William P. Torngren and Neil D. Houston, Deputies Attorney General, represented complainant Wayne J. Quint, Jr., Director of the California Department of Justice, Bureau of Gambling Control (Bureau), State of California.<sup>2</sup> Attorneys Jarhett Blonien of the law firm Blonien & Associates and Alexandra T. Stupple of the Law Offices of Alexandra T. Stupple represented respondent Joseph Frederick Capps (Respondent), who was present for a majority of the hearing.<sup>3</sup>

2. Evidence was received, and the record was left open to allow Messrs. Torngren and Houston to submit cost declarations, Respondent to respond to those declarations, and the parties to submit written closing and reply briefs. Messrs. Torngren's and Houston's declarations

<sup>1</sup> This matter was consolidated for hearing with the matters involving Louis Sarantos, Jr., (HQ2015-00003AC), Leon Bernardi (BGC-HQ2013-00003AC), Edward Glen Mason (BGC-HQ2015-00022SL), and Jon Strecker (BGC-HQ2015-00023SL). Messrs. Sarantos, Mason, and Strecker entered into settlement agreements with complainant prior to hearing, and only Messrs. Bernardi's and Capps's matters proceeded to hearing. A separate Proposed Decision pertaining to Mr. Bernardi was prepared pursuant to complainant's request and California Code of Regulations, title 1, section 1016, subdivision (d).

<sup>2</sup> Mr. Quint was the Bureau's Director when this matter was filed. After the hearing concluded, Stephanie Shimazu was appointed as the Bureau's Director.

<sup>3</sup> Mr. Capps was excused from the testimony of the last witness on the fourth day of hearing and the entirety of the fifth day with the consent of his counsel.

1 are marked collectively as Exhibit 38, and complainant's closing and reply briefs are marked as  
2 Exhibit 39 and 40, respectively. Respondent's opposition to imposition of costs is marked as  
3 Exhibit 118, and his closing and reply briefs are marked as Exhibits 119 and 120, respectively.

4 3. The record was closed, and the matter was submitted for decision on April 9, 2018.

5 4. The ALJ issued a proposed decision on April 27, 2018 that was received by the  
6 Commission on May 23, 2018.

7 5. On August 23, 2018, the Commission issued an Order of Nonadoption and Fixing  
8 Date for Receipt of Written Argument.

9 6. The Commission received written argument from each party on October 1, 2018  
10 which were marked for identification as follows:

11 a. Exhibit 121, Respondent's Reply to the California Gaming Control Commission's  
12 Request for Argument Following Rejection of the ALJ Decision in Favor of  
13 Applicant;

14 b. Exhibit 122, Complainant's Argument Following Notice and Order of Non-  
15 Adoption.

16 7. The time for filing written argument in this matter having expired, written  
17 argument having been filed by both parties and such written argument, together with the entire  
18 record, including the transcript of said hearing, having been read and considered, pursuant to  
19 Government Code Section 11517, the Commission issues the following decision.

## 20 **FACTUAL FINDINGS**

### 21 *Jurisdiction*

22 8. On or about November 28, 2009, the Bureau received an application for Third-  
23 Party Proposition Player Services License for Supervisor, Player or Other Employee, from  
24 Respondent to allow for his employment as a third-party proposition player for Pacific Gaming  
25 Services, LLC (Pacific Gaming).

26 9. On or about April 9, 2010, the Bureau submitted an initial Level II Third Party  
27 Background Investigation Report to the Commission recommending approval of Respondent's  
28

1 license.

2 10. On or about May 12, 2011, The Commission approved Respondent's third party  
3 license as a player for Pacific Gaming, and issued third party player license number TPPL-  
4 006948, with an expiration date of May 31, 2013. Respondent has continuously held a third party  
5 player license since then.

6 11. On or about January 17, 2015, Respondent submitted a third party player license  
7 renewal application (Application) for Pacific Gaming to the Bureau, which is the subject of this  
8 Decision and Order.

9 12. On or about October 16, 2015, the Bureau submitted a Third Party Player  
10 Background Investigation Report in which it recommended that the Commission deny  
11 Respondent's Application on the basis of Respondent's participation in, and failure to disclose, a  
12 joint venture agreement and financing arrangement concerning the Clovis 500 Club (500 Club).

13 13. At the November 19, 2015 Commission meeting, the Commission referred  
14 consideration of Respondent's Application to an evidentiary hearing before an administrative law  
15 judge of the Office of Administrative Hearings, sitting on behalf of the Commission, pursuant to  
16 Business and Professions Code section 19825 and California Code of Regulations, title 4, section  
17 12058. Respondent's third party player license expired on November 30, 2015. However,  
18 pursuant to California Code of Regulations, title 4, section 12035, subd. (b)(2), at the November  
19 19, 2015 meeting, the Commission issued Respondent an interim renewal license which was valid  
20 through November 30, 2017.<sup>4</sup> On November 16, 2017, the Commission issued Respondent a  
21 subsequent interim renewal license which is valid through November 30, 2019.

22 14. On or about September 9, 2016, the Bureau filed a Statement of Issues (SOI)  
23 alleging that cause exists to deny Respondent's Application because he did not disclose his  
24 financial interest in the 500 Club. The SOI also alleges, "Respondent conspired with the other

25 <sup>4</sup> The Commission shall issue an interim renewal license when it has elected to hold an evidentiary hearing  
26 in accordance with California Code of Regulations, title 4, section 12054, subdivision (a)(2). (Cal. Code  
27 Regs., tit. 4, §12035, subd. (a)(1).) The interim renewal license is valid for two years or until a final order  
28 is issued pursuant to California Code of Regulations, title 4, section 12066, whichever is earlier. (Cal.  
Code Regs., tit. 4, §12035, subd. (b)(2).)

1 participants in the joint venture, including Louis Sarantos, to conceal from the Bureau and  
2 Commission the sources of financing for the relocation of the Clovis 500 Club Casino."

3 *Factual Basis for the Bureau's Recommendation*

4 15. Louis and George Sarantos purchased the 500 Club, a four-table card room,  
5 restaurant, and bar on N. Clovis Avenue in Clovis, California, from their parents in 1974. The two  
6 brothers were equal partners in the 500 Club, and they operated it jointly until George Sarantos  
7 entered into a new business venture by opening the Club One Casino (Club One) in Fresno,  
8 California. While George Sarantos maintained his ownership interest in the 500 Club, he left its  
9 day-to-day operations to his brother.

10 16. In 2010, Louis Sarantos acquired his brother's interest in the 500 Club, and  
11 continued to operate the business as a sole proprietorship. Sometime thereafter, he began  
12 exploring the possibility of relocating the 500 Club from its original location on Clovis Avenue to  
13 a new location on West Shaw Avenue. At his brother's recommendation. Louis Sarantos retained  
14 attorney John Cardot to assist with obtaining financing for the desired expansion and relocation.

15 17. Evidence presented at the hearing established that on or about November 10, 2011,  
16 attorney John Cardot formed a joint venture with Respondent, Leon Bernardi, Lodi Fransesconi,  
17 Don Nicholson, Edward Mason, and Jon Strecker for the sole purpose of loaning approximately  
18 \$1,500,000 to licensee Louis Sarantos, owner of the 500 Club, for the purpose of financing the  
19 relocation of, and tenant improvements to, the 500 Club.

20 18. The joint venture agreed to make a \$1.5 million construction loan to Louis  
21 Sarantos to pay for tenant improvements to the 500 Club's new location. The loan would accrue  
22 interest at the rate of 10 percent per annum and be payable over four years through monthly  
23 payments of \$15,990.83 and a final balloon payment of \$1,257,811.60.

24 19. The loan was to be funded by contributions from each joint venturer in an amount  
25 specified in the joint venture agreement. Pursuant to the joint venture agreement, each joint  
26 venturer gave Mr. Cardot a limited irrevocable power of attorney to take any and all actions  
27 reasonably required to make the loan to Mr. Sarantos, including, but not limited to negotiating,  
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1 finalizing, executing, performing, amending, and enforcing appropriate loan documents,  
2 collecting, holding, and advancing the joint venture contributions from the parties, and disbursing  
3 monies.

4 20. The joint venture agreement required Mr. Cardot to acquire on behalf of  
5 Respondent and the joint venturers, an option to purchase certain percentage interests in the 500  
6 Club upon the satisfaction of several conditions. Specifically, the agreement provided:

7 In consideration for the Parties making the Construction Loan to Louis, John shall  
8 obtain the irrevocable right, but not the obligation, from Louis on behalf of the  
9 Parties to purchase a 50% interest in the Card Room in such percentages of the  
10 Card Room as shown below the respective names of the Parties in the row entitled  
11 "Net Interests" on the left side of the Right to Purchase Interests in Card Room  
12 Schedule attached hereto as Exhibit D and incorporated by this reference (the  
13 "Interests Schedule"). No party may acquire any ownership interest in the Card  
14 Room without the prior approval and consent of the California Gambling Control  
15 Commission (the "Commission") and the Clovis City Council ("Clovis"). The  
16 purchase price for purchasing 50.00% of the Card Room business and assets,  
17 subject to all liabilities associated with the Card Room, from Louis is [as] follows  
(collectively, the "Purchase Price"): (i) \$300,000 in cash upon closing; (ii)  
18 foregoing and waving the deferred interest of 5% due on the Construction Loan;  
19 and (iii) allowing Dusten to acquire 2.5% of the 50% interest in the Card Room  
20 (subject to its liabilities) being acquired by the Parties. If any party exercised [sic]  
21 their [sic] right to purchase, each such party shall be obligated to pay such portion  
22 of the Purchase Price as their [sic] respective interests [sic] bear [sic] to the total  
23 interests being acquired by the Parties.

24 21. Louis Sarantos knew the lender for the construction loan would be a group of  
25 lenders which included Mr. Cardot.<sup>5</sup> He also knew Mr. Cardot would act as the joint venture's  
26 authorized agent in extending the loan. On November 15, 2011, Mr. Cardot and Louis Sarantos  
27 entered into a Business Plan Agreement, which provided, in part:

28 I. Louis has secured "lease" financing from TEQ Leasing in the amount of  
\$500,000 to purchase personal property for the project and several persons have  
informed Louis that they are willing to make him loan[s] in amounts less than the  
remaining \$1,500,000 needed by Louis to finance the project if John would  
participate with the group making the loan and structure, draft documents, and

<sup>5</sup> A joint venture is "a special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation, or as an association of persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge""' (*Epstein v. Stahl* (1959) 176 Cal.App.2d 53, 57; quoting *Simev. Malouf* (1949) 95 Cal.App.2d 82, 95.)

1 perform the loan transactions on behalf of the group;

2 J. Louis has also requested John to participate in the group of lenders, to  
3 contribute an additional amount sufficient to make a construction loan in an  
4 amount not to exceed \$1,500,000, and to structure and draft loan documents for  
5 the group to make the construction loan, and to perform the construction loan on  
6 behalf of the group;

7 K. John has agreed to participate as requested by the group subject to the  
8 conditions that the group agrees for John to act as the agent for the group in order  
9 to make the construction loan to Louis and that Louis agree to different but  
10 slightly better loan terms than Louis offered to the last prospective lender who  
11 declined to make the loan;

12 22. Additionally, Mr. Cardot and Louis Sarantos entered into a Loan Agreement  
13 whereby the former agreed, on behalf of the joint venture, to loan the latter an amount not to  
14 exceed \$1.5 million for the purpose of making tenant improvements to the 500 Club's new  
15 location. Louis Sarantos signed a Secured Promissory Note agreeing to repay the total amount  
16 ultimately loaned, and a security agreement granting the joint venture a security interest in:

17 [A]ny and all of the personal property, inventory, equipment, trade fixtures and  
18 any accessions<sup>6</sup> thereto of DEBTOR, located at the Premises<sup>7</sup> or used in  
19 connection with the card room, bar, or restaurant business conducted on the  
20 Premises (excluding only the Card Room Gambling License and the ABC  
21 License), including, but not limited to, those assets specifically set forth on Exhibit  
22 A attached hereto and incorporated by this reference, any other contract rights or  
23 rights to the payment of money, insurance claims and proceeds, and all general  
24 intangibles of DEBTOR including, without limitation, all payment intangibles,  
25 trademarks, trademark applications, trade names, copyrights, copyright  
26 applications, software, engineering or architectural drawings, service marks,  
27 customer lists, goodwill, and all permits, agreements of any kind or nature  
28 pursuant to which DEBTOR possesses, uses or has authority to possess or use  
property (whether tangible or intangible) of others or others possess, use or have  
authority to possess or use property (whether tangible or intangible) of DEBTOR,  
and all recorded data of any kind or nature, regardless of the medium of recording  
including, without limitation, all software, writings, plans, specifications and  
schematics of DEBTOR. To the extent applicable, terms contained in this section  
are given the meanings defined in Article 9 of the Uniform Commercial Code and  
adopted in the State of CALIFORNIA and is intended to include all personal  
property of DEBTOR used to operate the business of the Clovis 500 Club at the  
Premises, whether owned now or acquired later, and all proceeds and products  
thereof.

<sup>6</sup> "'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost." (Cal. U. Com. Code, § 9102, subd.(a)(1).)

<sup>7</sup> "Premises" was defined in the agreement as "500 N. Clovis Avenue, Clovis, California 93612."

1 (Capitalization and bold original.)

2 23. Finally, Mr. Cardot, acting on behalf of the joint venture, and Louis Sarantos  
3 entered into a Right to Purchase Interest in Card Room Agreement. The agreement provided:

4 Louis hereby irrevocably grants to John the exclusive right to purchase up to a  
5 50% interest in the Card Room, subject to all liabilities associated with the Card  
6 Room (the "RTP") during the term (as defined below) of this Agreement. John  
7 acknowledges and understands that the liabilities associated with the Card Room  
8 will include the following: (i) that certain Secured Promissory Note dated  
9 December 10, 2010, made payable and issued to George Sarantos (\$4M; (ii) a  
10 construction loan (\$1.5M); (iii) a personal property lease (\$500k); (iv) a  
11 Commercial Lease for the New Location; and (v) the accounts payable of the Card  
12 Room.

13 24. The duration of the purchase option was from the date the agreement was executed  
14 "until the date which is 120 days after the opening of the Card Room at the New Location." The  
15 purchase price was \$300,000 and the waiver of the deferred interest due and owing on the  
16 construction loan.

17 25. Between November 16, 2011, and June 15, 2012, Mr. Cardot, on behalf of the  
18 joint venture, disbursed a total of \$1.2 million to Louis Sarantos pursuant to the agreements  
19 discussed above.

20 *Nondisclosure of the Joint Venture's Purported Financial Interest in 500 Club and Alleged*  
21 *Conspiracy to Conceal Information from the Bureau and the Commission*

22 26. The only questions on the Application Respondent submitted on January 17, 2015  
23 were the following, each of which Respondent answered completely and truthfully:

24 (1) Have you been a party to any civil litigation since last filing third-party proposition  
25 player services license application?

26 (2) Have you been named in any administrative action affecting any license certification  
27 since last filing a third-party proposition player services license application?

28 (3) Have you been convicted of any crime (misdemeanor or felony) since last filing a  
third-party proposition player services license application?

(4) Have you acquired or increased a financial interest in a business that conducts lawful

1 gambling outside the state since last filing a third-party proposition player services license  
2 application?<sup>8</sup>

3 27. Respondent testified at the hearing that he truthfully responded to the four  
4 questions on his Application. Respondent testified that he did not disclose any information with  
5 his Application, other than that which was requested, and the Bureau never requested that he  
6 complete a supplemental questionnaire. Sometime prior to the date on which the Bureau  
7 recommended to the Commission that his Application be denied, however, someone from the  
8 Bureau sent him emails inquiring about his occupation and the joint venture's construction loan to  
9 Louis Sarantos.<sup>9</sup> Respondent stated he responded completely and truthfully to each of the emails.  
10 He was never asked for a copy of the joint venture agreement, and he never provided one.

11 28. Respondent testified that he reviewed the Gambling Control Act (Bus. & Prof.  
12 Code, div. 8, ch. 5, § 19800 et seq.) prior to signing the joint venture agreement, and concluded  
13 he did not need to disclose to the Bureau or the Commission the joint venture's construction loan  
14 because the 500 Club was being operated as a sole proprietorship. He further stated he never  
15 made an agreement with any of the other joint venturers to hide from the Bureau or the  
16 Commission the fact that the joint venture made the construction loan and acquired an option to  
17 purchase an interest in the 500 Club.

18 29. Respondent testified that he consulted with more than one attorney to confirm his  
19 belief that he was not required to disclose the existence of the Loan to the Bureau or Commission.

20 30. Attorney John Cardot testified that Respondent did not believe he had a financial  
21 interest in the 500 Club. Mr. Cardot testified that he had worked with Respondent for  
22 approximately eleven years prior to the transaction at issue and that Respondent is a person of  
23 honesty and integrity and would make any disclosures he believed were required.

24 31. Mr. Cardot testified that there was no conspiracy between him, Respondent, and  
25 the other joint venturers, to not disclose the financing agreement between the joint venturers and

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26 <sup>8</sup> Respondent answered "no" to each question, except the last. He explained his answer to the last  
27 question by including a statement disclosing his ownership of shares in MGM Resorts International and  
28 Caesars Acquisitions Co.

<sup>9</sup> Neither complainant nor respondent identified the person with whom respondent exchanged  
emails or introduced copies of the emails.

1 Louis Sarantos from the Bureau.

2 32. Yolanda Morrow, Assistant Bureau Chief, testified that Respondent did not  
3 disclose that he provided funds for the construction loan or his interest in the Right to Purchase  
4 Interest in Card Room Agreement and this information would have been important to the Bureau  
5 in making its licensing recommendation. However, Ms. Morrow also testified that the Bureau did  
6 not require Respondent to fill out a supplemental application containing financial information and  
7 the renewal application form did not have a place for Respondent to disclose this information.

8 33. Information about a third-party proposition player services license applicant's  
9 financial involvement in California gambling establishments, California gambling enterprises, or  
10 California third-party proposition player service providers is material to determining the  
11 applicant's suitability for licensure. The financial and operational limitations between gambling  
12 enterprises/establishments and third-party proposition player service providers found in Business  
13 and Professions Code Section 19984(a) and Section 12200.7 of Title 4 of the California Code of  
14 Regulations are just some examples of why such relationships are material.

15 34. Louis Sarantos testified that at the time the Loan Agreement was signed, he had  
16 never met Respondent or had any discussions with him about the documents or the agreement.

17 35. Leon Bernradi, one of the joint venturers who also signed the loan agreement,  
18 testified that he never met Respondent or discussed the agreement with Respondent prior to  
19 entering into it.

20 36. Mr. Bernardi also testified that Mr. Cardot and Clovis City Council told him that  
21 he would need to get approval from the Commission before obtaining a financial interest in the  
22 cardroom.

23 37. Mr. Cardot, Mr. Sarantos, and Mr. Bernardi's testimony corroborated  
24 Respondent's testimony that there was not a conspiracy between him and the other joint venturers  
25 to hide the existence of the loan agreement from the Bureau.

26 38. The Application Respondent submitted on January 17, 2015, asked him to disclose  
27 any financial interest he had "in a business that conducts lawful gambling *outside the state*"  
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1 (italics added), and he did. The Application did not ask him to disclose any financial interest he  
2 had in a business that conducts lawful gambling in California, and the Bureau never asked him to  
3 complete a supplemental questionnaire.

4 39. Respondent did not disclose the loan agreement to the Bureau or the Commission  
5 until someone contacted him by email after he submitted his Application. His testimony that he  
6 responded completely and truthfully to each of the emails inquiring about the construction loan  
7 was uncontested and credible.

8 40. Respondent's testimony that he concluded before entering into the joint venture  
9 that he did not need to disclose information about the construction loan to the Bureau or the  
10 Commission was also uncontested and credible, as was his testimony that he never made an  
11 agreement with any of the other joint venturers to hide such information from the Bureau or the  
12 Commission.

13 41. The persuasive evidence established Respondent answered the questions on his  
14 Application and responded to the Bureau's subsequent inquiries about his financial interest in the  
15 500 Club completely and truthfully.

16 42. The evidence further established no one else from the Bureau or the Commission  
17 asked Respondent any questions that would have required him to disclose his financial interest in  
18 the 500 Club in order for his answers to be complete and truthful.

19 43. Finally, the evidence established Respondent did not believe he was required to  
20 volunteer information about the construction loan to the Bureau or the Commission, and he did  
21 not conspire with any of the joint venturers to conceal such information from the Bureau or the  
22 Commission.

23 44. Had Respondent simply asked the Bureau about the required disclosures there  
24 would be no suggestion that he was, for whatever reason, motivated to keep the information from  
25 the Bureau or the Commission. Certainly the Bureau and the Commission are the best at  
26 determining what disclosure is necessary to carry out the policies relating to controlled gambling  
27 or what information is material to licensure qualification. Respondent's failure to ask the Bureau  
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1 or simply disclose the information raises questions of his suitability under Business and  
2 Professions Code sections 19857 and 19859. However, his credible testimony regarding his  
3 independent review of the Gambling Control Act, his legal consultations, the lack of any  
4 conspiracy to deceive the Bureau, as well as his complete and truthful responses to all the  
5 Bureau's inquiries are sufficient to overcome this suggestion.

6 45. There was no evidence presented that Respondent is ineligible for licensing as a  
7 third-party proposition player for any of the reasons provided in CCR section 12218.11,  
8 subdivisions (a) to (d).

9 46. All documentary and testimonial evidence submitted by the parties that is not  
10 specifically addressed in this Decision and Order was considered but not used by the Commission  
11 in making its determination on Respondent's Application.

### 12 13 LEGAL CONCLUSIONS

#### 14 *Applicable Burden/Standard of Proof*

15 47. Division 1.5 of the Business and Professions Code, the provisions of which govern  
16 the denial of licenses on various grounds, does not apply to licensure decisions made by the  
17 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

18 48. An application to receive a license constitutes a request for a determination of the  
19 applicant's general character, integrity, and ability to participate in, engage in, or be associated  
20 with, controlled gambling. Business and Professions Code section 19856(b).

21 49. At an evidentiary hearing pursuant to Business and Professions Code section  
22 19825 and Title 4, CCR section 12058(a), the burden of proof rests with the applicant to prove his  
23 qualifications to receive any license under the Gambling Control Act. Business and Professions  
24 Code section 19856(b). Title 4 CCR section 12058(b).

25 50. Respondent's reliance on the holding in *Schaffer v. Weast*, (2005) 546 U.S. 49,  
26 as support for his argument that complainant bears the burden of proving respondent violated  
27 the statutes alleged is misplaced. The issue in that case was which party bore the burden of  
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1 proof at an impartial due process hearing held pursuant to the Individuals with Disabilities  
2 Education Act (84 Stat. 175, as amended, 20 U.S.C. § 1400 et seq., 2000 ed. and Supp.V).  
3 The High Court concluded that since the hearing was initiated by the parents of a special  
4 education student challenging an individualized education program created by the school  
5 district, the parents bore the burden of proof at hearing. (*Id.*, at p. 51.) Here, respondent is  
6 challenging the Bureau's conclusion that his renewal application is subject to denial because  
7 he violated Business and Professions Code sections 19854, 19857, subdivisions (a) and (b),  
8 19859, subdivision (b), and 19866. *Schaffer* supports the conclusion that he has the burden of  
9 proof. The holding in *Mass v. Board of Education of San Francisco Unified School District*,  
10 (1964) 61 Cal.2d 612, is not authority for respondent's position. The appellate court did not  
11 consider the issue of burden of proof, and its decision cannot be relied upon as authority on that  
12 issue. (*Western Landscape Construction v. Bank of America National Trust and Savings*  
13 *Association* (1997) 58 Cal.App.4th 57, 61 ["Only statements necessary to the decision are binding  
14 precedent; explanatory observations are not binding precedent"]

15 *Applicable Law*

16 *AGENCY*

17 51. An agent's knowledge of information pertaining to the agency that is acquired  
18 in the course of such agency is imputed to the principal. (*In re the Marriage of Cloney* (2011)  
19 91 Cal.App.4th 429, 439.) This rule arises from an agent's duty to disclose to his principal all  
20 information material to the agency acquired during the course of the agency. (*Ibid.*)

21 *CONSPIRACY*

22 52. A conspiracy requires the agreement of two or more people to engage in an act of  
23 impropriety. (*Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189 206 [the  
24 gravamen of a claim for civil conspiracy is the agreement of two or more people to aid in the  
25 commission of a civil wrong]; *People v. Cook* (2001) 91 Cal.App.4th 910, 918 ["A conspiracy is  
26 an agreement by two or more people to commit any crime"].) One must be aware the agreed  
27 conduct is improper in order to engage in a conspiracy. (*People v. Meneses* (2008) 165  
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1 Cal.App.4th 1648, 1664-1664 [criminal conspiracy]; *Berg & Berg Enterprises, LLC v. Sherwood*  
2 *Partners, Inc.* (2005) 131 Cal.App.4th 802, 823 [civil conspiracy].)

3 PURCHASE OPTION

4 53. A purchase option, when supported by consideration, is a contract by which the  
5 owner of property (optionor) gives another (optionee) the exclusive right to purchase the  
6 property for a stipulated price within a specified time." (*County of San Diego v. Miller* (1975)  
7 13 Cal.3d 684, 688.) It is merely the optionor's irrevocable offer to sell the property to the  
8 optionee. (*Warner Bros. Pictures, Inc. v. Brodel* (1948) 31 Cal.2d 766, 772.) "An option is  
9 not a sale of the property, but a sale of a right to purchase the property. (*Wachovia Bank v.*  
10 *Lifetime Industries, Inc.* (2006) 145 Cal.App.4th 1039, 1049.) It grants no interest in the  
11 property. (*Id.*, at p. 1050.)

12 THE GAMBLING CONTROL ACT

13 54. Public trust and confidence can only be maintained by strict and comprehensive  
14 regulation of all persons, locations, practices, associations, and activities related to the operation  
15 of lawful gambling establishments and the manufacture and distribution of permissible gambling  
16 equipment. Business and Professions Code section 19801(h).

17 55. The Gambling Control Act (Bus. & Prof. Code, div. 8, ch. 5, § 19800 et seq; the  
18 "Act") is a comprehensive statutory scheme regulating gambling in the State of California. The  
19 Act is administered through a bifurcated system of oversight and regulation, which includes the  
20 California Gambling Control Commission and the Bureau of Gambling Control.

21 56. The Commission has the responsibility of assuring that licenses, approvals, and  
22 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose  
23 operations are conducted in a manner that is inimical to the public health, safety, or welfare.  
24 Business and Professions Code section 19823(a)(1).

25 57. An "unqualified person" means a person who is found to be unqualified pursuant  
26 to the criteria set forth in Business and Professions Code section 19857, and "disqualified person"  
27 means a person who is found to be disqualified pursuant to the criteria set forth in Business and  
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1 Professions Code section 19859. Business and Professions Code section 19823(b).

2 58. The Commission has the power to deny any application for a license, permit, or  
3 approval for any cause deemed reasonable by the Commission. Business and Professions Code  
4 section 19824(b).

5 59. No gambling license shall be issued unless, based on all of the information and  
6 documents submitted, the commission is satisfied that the applicant is a person of good character,  
7 honesty and integrity. Business and Professions Code section 19857(a).

8 60. No gambling license shall be issued unless, based on all of the information and  
9 documents submitted, the commission is satisfied that the applicant is a person whose prior  
10 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the  
11 public interest of this state, or to the effective regulation and control of controlled gambling, or  
12 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in  
13 the conduct of controlled gambling or in the carrying on of the business and financial  
14 arrangements incidental thereto. Business and Professions Code section 19857(b).

15 61. The commission shall deny a license to any applicant who is disqualified for  
16 failure of the applicant to provide information, documentation, and assurances required by this  
17 chapter or requested by the chief, or failure of the applicant to reveal any fact material to  
18 qualification, or the supplying of information that is untrue or misleading as to a material fact  
19 pertaining to the qualification criteria. Business and Professions Code section 19859(b).

20 62. An applicant must make complete and truthful disclosures when providing  
21 information to the Bureau and Commission whether that information is required in an application,  
22 upon request, or by statute or regulation.

23 63. A requester shall be ineligible for licensing [as a third party proposition player] if  
24 the requester has failed to meet the requirements of Business and Professions Code sections  
25 19856 or 19857. Title 4, CCR section 12218.11(e).

26 *Causes for Denial Alleged in Statement of Issues*

27 64. Respondent applied for renewal of his third-party license as a player for Pacific  
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1 Gaming Services, LLC. He has never held, and did not apply for, a key employee license.  
2 Therefore, Business and Professions Code section 19854 does not apply to him, and no cause  
3 exists pursuant to that statute to deny his renewal application.

4 65. Section 19866 requires an applicant to make complete and truthful disclosures  
5 when providing information to the Bureau and the Commission. However, Business and  
6 Professions Code section 19866 is not a cause for denial independent of Business and Professions  
7 Code sections 19859, subdivision (b) and 19857, subdivisions (a) and (b). No cause exists  
8 pursuant to Business and Professions Code section 19866 to deny Respondent's renewal  
9 application.

10 66. Respondent answered the questions on his renewal application and responded to  
11 the Bureau's subsequent inquiries about his financial interest in the 500 Club completely and  
12 truthfully. The evidence established that Respondent reviewed the Gambling Control Act and  
13 that he consulted with more than one attorney regarding disclosure of the existence of the Loan to  
14 the Bureau or Commission. Notwithstanding its materiality to his application, Respondent had a  
15 credible belief that he was not required to volunteer information about the construction loan to the  
16 Bureau or the Commission. No cause exists pursuant to Business and Professions Code section  
17 19859, subdivision (b), to deny his renewal application.

18 67. For the reasons explained in paragraph 64, and because the evidence established  
19 that Respondent did not conspire with any of the joint venturers to conceal information from the  
20 Bureau or the Commission, no cause exists pursuant to Business and Professions Code section  
21 19857, subdivisions (a) and (b), to deny his renewal application.

22 *Conclusion*

23 68. Respondent has met his burden of proving that he is a person of good character,  
24 honesty, and integrity. Therefore, Respondent is qualified to receive a third party proposition  
25 player license pursuant to Business and Professions Code section 19857(a). As a result,  
26 Respondent is not ineligible to receive a third party proposition player license pursuant to Title 4,  
27 CCR section 12218.11(e).

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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.

Title 4, CCR section 12066, subsection (c) provides:

A decision of the Commission denying an application or imposing conditions on license shall be subject to judicial review as provided in Business and Professions Code section 19870, subdivision (e). Neither the right to petition for judicial review nor the time for filing the petition shall be affected by failure to seek reconsideration.

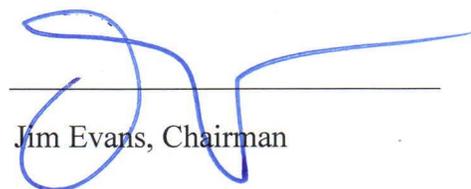
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**ORDER**

1. Joseph Capps' Application for Approval of Initial Third-Party Proposition Player Services License is APPROVED.
2. Each side to pay its own attorneys' fees.

This Order is effective on November 29, 2018.

Dated: 11/29/18 Signature:   
Jim Evans, Chairman

Dated: 11/29/18 Signature:   
Paula LaBrie, Commissioner

Dated: 11/29/18 Signature:   
Gareth Lacy, Commissioner

Dated: 11/29/18 Signature:   
Trang To, Commissioner