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BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION  
STATE OF CALIFORNIA

In the Matter of the Statement of  
Issues Against:

JOSEPH FREDERICK CAPPS

License No. TPPL-006948

OAH No. 2016100308

BGC Case No. BGC-HQ2015-00024SL

CGCC Case No. 2013-0426-1

**NOTICE AND ORDER OF  
NONADOPTION AND FIXING DATE  
FOR SUBMISSION OF WRITTEN  
ARGUMENT**

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**NOTICE AND ORDER OF NONADOPTION**

The attached April 27, 2018 Proposed Decision and Order of Administrative Law Judge Coren D. Wong is hereby rejected pursuant to Government Code Section 11517(c)(2)(E) by the State of California, California Gambling Control Commission. The Commission hereby advises the parties that, in accordance with Government Code Section 11517(c)(2)(E)(ii), they may submit written argument to the Commission.

The Commission will decide this matter on the record, transcript, and written argument from the parties.

**ORDER FIXING DATE FOR SUBMISSION OF WRITTEN ARGUMENT**

The parties' written argument must be provided on or before Monday, October 1, 2018. The parties may not submit any opposition or reply briefs.

Written argument shall: (1) state each point under a separate heading or subheading summarizing the point and support each point by argument, and citation of authority, if applicable, and; (2) support any reference to a matter in the record by a citation to the volume and page number of the record or exhibits number where the matter appears.

1 Any written argument must be simultaneously provided to the other party and filed with  
2 the Commission at its office as follows:

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4 California Gambling Control Commission  
2399 Gateway Oaks Dr. Ste. 220  
5 Sacramento, CA 95833

6 This Decision is effective immediately.

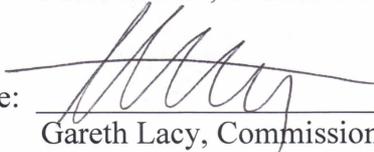
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8 Dated: 8/23/18

Signature:   
Jim Evans, Chairman

10 Dated: 8/23/18

Signature:   
Paula LaBrie, Commissioner

12 Dated: 8/23/18

Signature:   
Gareth Lacy, Commissioner

14 Dated: 8/23/18

Signature:   
Trang To, Commissioner

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BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

JOSEPH FREDERICK CAPPS,

License No. TPPL-006948

Respondent.

Case No. BGC-HQ2015-00024SL

OAH No. 2016100308

**PROPOSED DECISION**

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, who was present for a majority of the hearing.<sup>3</sup>

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<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 will be 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.

Evidence was received, and the record was left open to allow Messrs. Torngren and Houston to submit cost declarations, Mr. Capps to respond to those declarations, and the parties to submit written closing and reply briefs. Messrs. Torngren's and Houston's declarations are marked collectively as Exhibit 38, and complainant's closing and reply briefs are marked as Exhibit 39 and 40, respectively. Mr. Capps's opposition to imposition of costs is marked as Exhibit 118, and his closing and reply briefs are marked as Exhibits 119 and 120, respectively. The record was closed, and the matter was submitted for decision on April 9, 2018.

## SUMMARY

The Bureau seeks the denial of respondent's application to renew Third-Party Player License No. TPPL-006948 on the grounds that he: 1) did not disclose his financial interest in the Clovis 500 Club Casino (500 Club) to the Bureau or the California Gambling Control Commission (Commission), and 2) conspired with other joint venturers to conceal the existence of a construction loan made to Louis Sarantos from the Bureau and the Commission. While respondent did not disclose his financial interest in the 500 Club, the persuasive evidence established the Commission does not consider having a financial interest in a business that conducts lawful gambling *in California* material to one's suitability for licensure. The persuasive evidence further established he was under no obligation to disclose his financial interest in the 500 Club to the Bureau or the Commission. Finally, the persuasive evidence established respondent did not conspire with other joint venturers to conceal the construction loan from the Bureau and the Commission. Therefore, no cause exists to deny respondent's renewal application, the application should be granted, and Third-Party Player License No. TPPL-006948 should be renewed.

## FACTUAL FINDINGS

### *Jurisdiction*

1. The Bureau received respondent's application for a third-party license as a player for Pacific Gaining Services, LLC, on November 28, 2009. After conducting an investigation, the Bureau recommended to the Commission that respondent's application be granted. On May 12, 2011, the Commission granted respondent's application and issued him Third-Party Player License No. TPPL-006948. The license was scheduled to expire May 31, 2013. There is no history of prior discipline of the license.

2. On January 17, 2015, respondent submitted to the Bureau an Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee to

renew his license.<sup>4</sup> The Bureau recommended that the Commission deny the application because respondent did not disclose the joint venture agreement and financing arrangement concerning the 500 Club discussed further below. On November 19, 2015, the Commission did not grant or deny respondent's application, but referred the matter for determination at an evidentiary hearing. The Commission also issued respondent an interim renewal license which is valid until the earlier of the outcome of this administrative proceeding or November 30, 2017.<sup>5</sup>

3. On September 9, 2016, complainant, acting solely in his official capacity, signed the Statement of Issues. Complainant alleged that cause exists to deny respondent's renewal application because he did not "disclose his financial interest in the Clovis 500 Club Casino." Complainant further alleged, "Respondent conspired with the other participants in the joint venture, including Louis Sarantos, to conceal from the Bureau and Commission the sources of financing for the relocation of the Clovis 500 Club Casino, and thus precluded the Bureau's investigation of the funding sources and the Commission's discretionary licensing thereof pursuant to the Act."

#### *Factual Basis for the Bureau's Recommendation*

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

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

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<sup>4</sup> There was no explanation for the nearly two-year gap between the date on which the original license was set to expire and respondent's subsequent renewal application, but it was undisputed he has held his license continuously since it was first issued.

<sup>5</sup> The Commission shall issue an interim renewal license when it has elected to hold an evidentiary hearing in accordance with California Code of Regulations, title 4, section 12054, subdivision (a)(2). (Cal. Code Regs., tit. 4, § 12035, subd. (a)(1).) The interim renewal license is valid for two years or until a final order is issued pursuant to California Code of Regulations, title 4, section 12066, whichever is earlier. (Cal. Code Regs., tit. 4, §12035, subd. (b)(2).)

6. On November 10, 2011, Mr. Cardot formed a joint venture with respondent, Leon Bernardi, Lodi Fransesconi, Don Nicholson, Edward Mason, and Jon Strecker for the sole purpose of financing the tenant improvements to the new location for the 500 Club. The business at the new location would consist of an 18-table card room, a bar, and a restaurant.

7. The joint venture agreed to make a \$1.5 million construction loan to Louis Sarantos to pay for tenant improvements to the 500 Club's new location. The loan would be payable over four years through monthly payments of \$15,990.83 and a final balloon payment of \$1,257,811.60. The loan would accrue interest at the rate of 10 percent per annum, one-half of which was to be included in each monthly payment and the other half in the final balloon payment. The loan was to be funded by contributions from each joint venturer in an amount specified in the joint venture agreement.

8. Pursuant to the joint venture agreement, each joint venturer gave Mr. Cardot "a limited irrevocable power of attorney ('POA') to take any and all actions reasonably required to make the Construction Loan to Louis, including, but not limited to negotiating, finalizing, executing, performing, amending, and enforcing appropriate loan documents with Louis, collecting, holding, and advancing the joint venture contributions from the Parties as John reasonably determines is necessary to perform the Construction Loan, and disbursing monies collected from Louis to the Parties."

9. The joint venture agreement required Mr. Cardot to acquire from Louis Sarantos an option to purchase an interest in the 500 Club's card room as consideration for making the loan. Specifically, the agreement provided:

In consideration for the Parties making the Construction Loan to Louis, John shall obtain the irrevocable right, but not the obligation, from Louis on behalf of the Parties to purchase a 50% interest in the Card Room in such percentages of the Card Room as shown below the respective names of the Parties in the row entitled "Net Interests" on the left side of the Right to Purchase Interests in Card Room Schedule attached hereto as Exhibit D and incorporated by this reference (the "Interests Schedule"). No party may acquire any ownership interest in the Card Room without the prior approval and consent of the California Gambling Control Commission (the "Commission") and the Clovis City Council ("Clovis"). The purchase price for purchasing 50.00% of the Card Room business and assets, 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) foregoing and waving the deferred interest of 5% due on the Construction Loan; and (iii) allowing Dusten to acquire 2.5% of the 50% interest in the Card Room (subject to its liabilities) being acquired by the Parties. If any party exercised [sic] their [sic] right to purchase, each such

party shall be obligated to pay such portion of the Purchase Price as their [*sic*] respective interests [*sic*] bear [*sic*] to the total interests being acquired by the Parties.

10. Louis Sarantos knew the lender for the construction loan would be a group of lenders which included Mr. Cardot.<sup>6</sup> He also knew Mr. Cardot would act as the joint venture's authorized agent in extending the loan. On November 15, 2011, Mr. Cardot and Louis Sarantos entered into a Business Plan Agreement, which provided, in part:

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 perform the loan transactions on behalf of the group;

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

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

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

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<sup>6</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 *Sime v. Malouf* (1949) 95 Cal.App.2d 82, 95.)

[A]ny and all of the personal property, inventory, equipment, trade fixtures and any accessions<sup>7</sup> thereto of DEBTOR, located at the Premises<sup>8</sup> or used in connection with the card room, bar, or restaurant business conducted on the Premises (excluding only the Card Room Gambling License and the ABC License), including, but not limited to, those assets specifically set forth on Exhibit A attached hereto and incorporated by this reference, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles of DEBTOR including, without limitation, all payment intangibles, trademarks, trademark applications, trade names, copyrights, copyright applications, software, engineering or architectural drawings, service marks, customer lists, goodwill, and all permits, agreements of any kind or nature 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.

(Capitalization and bold original.)

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

Louis hereby irrevocably grants to John the exclusive right to purchase up to a 50% interest in the Card Room, subject to all liabilities associated with the Card Room (the "RTP") during the term (as defined below) of this Agreement. John acknowledges

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<sup>7</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>8</sup> "Premises" was defined in the agreement as "500 N. Clovis Avenue, Clovis, California 93612."

and understands that the liabilities associated with the Card Room will include the following: (i) that certain Secured Promissory Note dated December 10, 2010, made payable and issued to George Sarantos (\$4M); (ii) a construction loan (\$1.5M); (iii) a personal property lease (\$500k); (iv) a Commercial Lease for the New Location; and (v) the accounts payable of the Card Room.

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

14. Between November 16, 2011, and June 15, 2012, Mr. Cardot, on behalf of the joint venture, disbursed a total of \$1.2 million to Louis Sarantos pursuant to the agreements discussed above. On June 15, 2012, Louis Sarantos executed a revised Secured Promissory Note reflecting the total amount of the construction loan from the joint venture as being \$1.2 million. The revised note specified that monthly payments in the amount of \$12,727.86 were due “commencing on July 15, 2012, and continuing on the same day of each month thereafter until June 15, 2016 (the ‘Maturity Date’), upon which date the entire Indebtedness, including all principal and interest (including the deferred interest of 5%), then owed under this Note shall be paid in full.” The parties also executed a revised Security Agreement and Right to Purchase Interest in Card Room Agreement reflecting the actual amount of the construction loan, but otherwise containing the same language as the originals.

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

15. The only questions on the renewal application respondent submitted to the Bureau on January 17, 2015, were the following, each of which he answered completely and truthfully:

1. Have you been a party to any civil litigation since last filing third-party proposition player services license application?
2. Have you been named in any administrative action affecting any license certification since last filing a third-party proposition player services license application?
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 gambling outside the state

since last filing a third-party proposition player services license application?<sup>9</sup>

16. Respondent explained at hearing that he did not disclose any information with his renewal application, other than that which was requested on the application, and the Bureau never requested that he complete a supplemental questionnaire. Sometime prior to the date on which the Bureau recommended to the Commission that his application be denied, however, someone from the Bureau sent him emails inquiring about his occupation and the joint venture's construction loan to Louis Sarrantos.<sup>10</sup> Respondent stated he responded completely and truthfully to each of the emails. He was never asked for a copy of the joint venture agreement, and he never provided one.

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

#### *Discussion*

18. The relevant facts underlying this matter were largely undisputed. Respondent was part of a joint venture that was formed for the sole purpose of loaning Louis Sarantos money to fund tenant improvements to the 500 Club's new location. Mr. Cardot acted as the agent of the joint venture in loaning \$1.2 million to Louis Sarantos, and Louis Sarantos knew Mr. Cardot was acting in such capacity. The loan was funded by contributions from respondent and the other joint venturers, and was secured by the 500 Club's assets located at the old location. As consideration for the loan, the joint venturers acquired an exclusive right to purchase a 50 percent interest in the 500 Club's card room.<sup>11</sup>

19. It was also undisputed that the renewal application respondent submitted on January 17, 2015, asked him to disclose any financial interest he had "in a business that conducts lawful gambling *outside the state*" (italics added), and he did. The application did

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<sup>9</sup> Respondent answered "no" to each question, except the last. He explained his answer to the last question by including a statement disclosing his ownership of shares in MGM Resorts International and Caesars Acquisitions Co.

<sup>10</sup> Neither complainant nor respondent identified the person with whom respondent exchanged emails or introduced copies of the emails.

<sup>11</sup> The validity of the purchase option is the subject of separate litigation, and no finding is made as to that issue. For purposes of this Proposed Decision, the option is presumed to be valid.

not ask him to disclose any financial interest he had in a business that conducts lawful gambling *in California*, and the Bureau never asked him to complete a supplemental questionnaire. The evidence raised a strong inference that the Commission considers the former information, but not the latter, material to an applicant's suitability for licensure, and complainant failed to rebut the presumption. Complainant did not allege in the Statement of Issues any statute or regulation that required respondent to voluntarily disclose his financial interest in the 500 Club to the Bureau or the Commission.

20. Respondent did not disclose the information discussed in Factual Finding 18 to the Bureau or the Commission until someone contacted him by email after he submitted his renewal application. His testimony that he responded completely and truthfully to each of the emails inquiring about the construction loan was uncontested and credible, as was his testimony that he was never asked for a copy of the joint venture agreement.

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

### *Summary*

22. The 500 Club conducts lawful gambling *solely* within California. Respondent obtained a financial interest in the 500 Club by virtue of the security interest he was given in the business's assets at the old location as security for repayment of the money he contributed to the construction loan. He did not acquire an ownership interest in the business by virtue of the purchase option he obtained. He first disclosed his financial interest to the Bureau or the Commission when someone from the Bureau contacted him by email after he submitted his renewal and inquired about the construction loan. While there was no evidence of the specific information requested in the emails or the specific information respondent provided in his responses, the evidence established he responded to the emails completely and truthfully and provided information about the construction loan. The evidence also established no one else from the Bureau or the Commission asked respondent any questions that would have required him to disclose his financial interest in the 500 Club in order for his answers to be complete and truthful. The evidence further established respondent did not conspire with any of the other joint venturers to conceal from the Bureau or the Commission the sources of financing for the tenant improvements to the 500 Club's new location.

### *Costs of Prosecution*

23. Complainant seeks to recover \$23,183.75 as the reasonable cost of prosecuting this matter pursuant to Business and Professions Code section 19930, subdivision (d). The Declaration of Neil D. Houston Re Costs and the Declaration of William P. Torngren Re Costs were submitted in support of the request. Attached to Mr. Houston's declaration is a

document entitled “Matter Time Activity By Professional Type,” which shows the Office of the Attorney General incurred costs in the total sum of \$8,245 for work performed in this matter by a Senior Assistant Attorney General and four Deputies Attorney General, including Messrs. Houston and Torngren, for which the Bureau has been billed. The document itemizes the costs by attorney, date, task, number of hours worked, hourly rate, and total amount. A similar document attached to Mr. Torngren’s declaration shows he spent an additional 87.88 hours working on this matter, and the Bureau was billed an additional \$14,938.75 for his time.

For the reasons explained in Legal Conclusions 26, 27, and 29 below, no legal basis exists for awarding complainant any costs of prosecution, and none are awarded.<sup>12</sup>

## LEGAL CONCLUSIONS

### *Applicable Burden/Standard of Proof*

1. This matter was initiated by complainant filing a Statement of Issues seeking to deny respondent’s application to renew his third-party license as a player for Pacific Gaming Services, LLC. Government Code section 11504 says the following about statements of issues:

A hearing to determine whether a . . . license . . . should be . . . renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. . . .

2. Complainant alleged in the Statement of Issues:

7. By acting in the matter alleged in paragraph 6, above, Respondent acquired a financial interest in the Clovis 500 Club [Casino]. At no time subsequent to November 11, 2011, including at the time(s) of Respondent’s periodic license renewal applications, did Respondent disclose his financial

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<sup>12</sup> Additionally, neither Mr. Houston nor Mr. Torngren provided any explanation for the need to have five different attorneys working on this matter, or why it was necessary for both of them to appear at all five days of hearing. The written transcript of the proceedings showed Mr. Houston played little part in presenting argument and evidence at hearing. Therefore, neither declaration establishes the reasonableness of the costs incurred by the Office of the Attorney General and billed to the Bureau.

interest in the Clovis 500 Club Casino. By acting in the manner herein alleged, Respondent conspired with the other participants in the joint venture, including Louis Sarantos, to conceal from the Bureau and Commission the sources of financing for the relocation of the Clovis 500 Club Casino, and thus precluded the Bureau's investigation of the funding sources and the Commission's discretionary licensing thereof pursuant to the Act.

8. Because Respondent acted in the manner herein alleged, Respondent's Third Party Player license application is subject to denial pursuant to Business and Professions Code sections 19854, 19857, subdivisions (a) and (b), 19859, subdivision (b), and 19866.

3. Respondent has the burden of proving he did not violate Business and Professions Code sections 19854, 19857, subdivisions (a) and (b), 19859, subdivision (b), and 19866 by failing to disclose his financial interest in the 500 Club and conspiring with other joint venturers to conceal from the Bureau and the Commission the sources of financing for the construction loan. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476 [annulling decision of Alcoholic Beverage Control Appeals Board granting liquor license and remanding matter back to Department of Alcoholic Beverage Control because administrative law judge improperly placed burden on parties protesting issuance of license to prove applicant was not qualified for licensure, rather than on applicant to prove he was].) He must meet his burden by a preponderance of the evidence. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence"].) This evidentiary standard requires respondent to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, he need only prove it is more likely than not he did not violate the statutes alleged. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

4. Respondent's reliance on the holding in *Schaffer v. Weast*, (2005) 546 U.S. 49, as support for his argument that complainant bears the burden of proving respondent violated the statutes alleged is misplaced. The issue in that case was which party bore the burden of proof at an impartial due process hearing held pursuant to the Individuals with Disabilities Education Act (84 Stat. 175, as amended, 20 U.S.C. § 1400 et seq., 2000 ed. and Supp.V). The High Court concluded that since the hearing was initiated by the parents of a special education student challenging an individualized education program created by the school district, the parents bore the burden of proof at hearing. (*Id.*, at p. 51.) Here, respondent is challenging the Bureau's conclusion that his renewal application is subject to denial because he violated Business and Professions Code sections 19854, 19857, subdivisions (a) and (b), 19859, subdivision (b), and 19866. *Schaffer* supports the conclusion that he has the burden of proof.

The holding in *Mass v. Board of Education of San Francisco Unified School District*, (1964) 61 Cal.2d 612, is not authority for respondent's position. The appellate court did not consider the issue of burden of proof, and its decision cannot be relied upon as authority on that issue. (*Western Landscape Construction v. Bank of America National Trust and Savings Association* (1997) 58 Cal.App.4th 57, 61 ["Only statements necessary to the decision are binding precedent; explanatory observations are not binding precedent"].)

### *Applicable Law*

#### AGENCY

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

#### CONSPIRACY

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

#### PURCHASE OPTION

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

#### THE GAMBLING CONTROL ACT

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

which includes the California Gambling Control Commission and the Bureau of Gambling Control.

9. The Commission is responsible for “assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.” (Bus. & Prof. Code, § 19823, subd. (a)(1).) It is also responsible for “assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.” (Bus. & Prof. Code, § 19823, subd. (a)(2).)

10. The Commission carries out its responsibilities by requiring people “to apply for a license, permit, registration, or approval as specified in this chapter, or regulations adopted pursuant to this chapter.” (Bus. & Prof. Code, § 19824, subd. (a).) It may “deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved.” (Bus. & Prof. Code, § 19824, subd. (b).)

11. The Bureau is responsible for receiving and processing applications for licenses, permits, and approvals; is required to investigate the qualifications of any applicant prior to issuance of the license, permit, or approval applied for; and may make a recommendation to the Commission about whether an application should be approved or denied. (Bus. & Prof. Code, § 19826, subd. (a).) The Bureau is also responsible for investigating alleged violations of the Act or any regulation adopted pursuant thereto, and may seek disciplinary action for any such violations. (Bus. & Prof. Code, § 19826, subds. (c)-(e).) The Bureau “has all powers necessary and proper to enable it to carry out fully and effectually the duties and responsibilities . . . specified in this chapter.” (Bus. & Prof. Code, § 19827, subd. (a).)

12. “The owner of a gambling enterprise shall apply for and obtain a state gambling license. The owner of a gambling enterprise shall be known as the owner-licensee.”<sup>13</sup> (Bus. & Prof. Code, § 19851, subd. (a).) If the owner is not a natural person, each of the following must individually apply for and obtain a gambling license before the owner may be issued a license:

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<sup>13</sup> “Gambling enterprise” is “a natural person or an entity, whether individual, corporate, or otherwise, that conducts a gambling operation and that by virtue thereof is required to hold a state gambling license under this chapter.” (Bus. & Prof. Code, § 19805, subd. (m).) “‘Gambling license’ or ‘state gambling license’ means any license issued by the state that authorizes the person named therein to conduct a gambling operation.” (Bus. & Prof. Code, § 19805, subd. (p).)

(a) If the owner is a corporation, then each officer, director, and shareholder, other than a holding or intermediary company, of the owner. The foregoing does not apply to an owner that is either a publicly traded racing association or a qualified racing association.

(b) If the owner is a publicly traded racing association, then each officer, director, and owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(c) If the owner is a qualified racing association, then each officer, director, and shareholder, other than an institutional investor, of the subsidiary corporation and any owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(d) If the owner is a partnership, then every general and limited partner of, and every trustee or person, other than a holding or intermediary company, having or acquiring a direct or beneficial interest in, that partnership owner.

(e) If the owner is a trust, then the trustee and, in the discretion of the commission, any beneficiary and the trustor of the trust.

(f) If the owner is a limited liability company, every officer, manager, member, or owner.

(g) If the owner is a business organization other than a corporation, partnership, trust, or limited liability company, then all those persons as the commission may require, consistent with this chapter.

(h) Each person who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities.

(i) Every employee, agent, guardian, personal representative, lender, or holder of indebtedness of the owner who, in the judgment of the commission, has the power to exercise a significant influence over the gambling operation.

(Bus. & Prof. Code, § 19852.)

13. Business and Professions Code section 19984 provides:

Notwithstanding any other law, a licensed gambling enterprise may contract with a third party for the purpose of providing proposition player services at a gambling establishment, subject to the following conditions:

(a) Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance by the department, and in no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services at gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess, and the department may collect, reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

(c) The department, pursuant to regulations of the commission, is empowered to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating third-party providers of proposition player services, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight. The department may adopt emergency regulations in order to implement this subdivision.

(d) No agreement or contract between a licensed gambling enterprise and a third party concerning the provision of proposition player services shall be invalidated or prohibited by the department pursuant to this section until the commission establishes criteria for, and makes determinations regarding the

licensure or registration of, the provision of these services pursuant to subdivision (b).

14. "A current valid registration issued by the Commission" has been required before a person can provide proposition player services since March 31, 2004. (Cal. Code Regs., tit. 4, § 12201, subd. (a).) An application for registration must include the following:

- (1) Payment of a nonrefundable application fee in the amount specified in paragraph (1) of section (d) of Section 12008.
- (2) A completed Bureau Application for Third Party Proposition Player Services Registration (BGC-435 (Rev. 10/17)), which is hereby incorporated by reference.
- (3) A properly completed Request for Live Scan Service (California Department of Justice Form BCII 8016, rev. 4/01) for an applicant that is an individual, confirming that the applicant's fingerprints have been submitted to the BCII for an automated background check and response.
- (4) Two 2x2 inch color passport-style photographs of an applicant that is an individual taken no more than one (1) year before submission of the application to the Bureau.

(Cal. Code Regs., tit. 4, § 12202, subd. (b).)

Additionally, an individual applying for registration "shall complete and submit the Bureau form Third-Party Proposition Player Services Registration Supplemental Information (BGC-436 (Rev. 07/17)), which is hereby incorporated by reference." (Cal. Code Regs., tit. 4, § 12202, subd. (c).)

15. California Code of Regulations, title 4, section 12203A provides the following regarding an application to renew a third party proposition player services registration:

- (a) Renewal applications for owners shall be received no later than 120 days prior to the expiration of the current registration, together with the application fee specified in paragraph (1) of subsection (d) of Section 12008. If an application is received after this 120-day deadline, an expedited processing fee of sixty dollars (\$60) shall be submitted with the application. If an expedited processing fee is due but has not been received, a registration renewal shall not be issued.
- (b) Renewal applications for supervisors, players, and other employees shall be received no later than 90 days prior to the

expiration of the current registration, together with the application fee specified in paragraph (1) of subsection (d) of Section 12008. If an application is received after this 90-day deadline, an expedited processing fee of sixty dollars (\$60) shall be submitted with the application. If an expedited processing fee is due but has not been received, a registration renewal shall not be issued.

(c) The Bureau shall notify the applicant in writing within 20 days of receiving the renewal application, that the application or resubmitted application is complete and accepted for filing, or that the application or resubmitted application is deficient. If an application for registration is incomplete, the Bureau shall request in writing any information needed in order to complete the application. The applicant shall be permitted 30 days in which to furnish the information. If the applicant fails to respond to the request, the application shall be deemed abandoned and no further action will be taken on it.

(d) Upon determination that an application for renewal of registration is complete, the application shall be processed by the Bureau within 60 days and the Executive Director shall either issue the registration and badge applied for or shall notify the applicant of denial and the grounds therefor under Section 12204.

(e) The Bureau shall provide written notice of abandonment of an application to the applicant and the Commission. If the application is for registration as a supervisor, player, or other employee, the Bureau shall also provide written notice of abandonment of the application to the primary owner.

(f) If the applicant submits a request for withdrawal of his or her application to the Bureau, the application shall be deemed abandoned and no further action will be taken on it.

(g) Nothing in this chapter shall require the Commission or Bureau to divulge to the applicant any confidential information received from any law enforcement agency or any information received from any person with assurances that the information would be maintained as confidential. Nothing in this chapter shall require the Commission or Bureau to divulge any information that might reveal the identity of any source of information or jeopardize the safety of any person.

16. At some point, the Commission began transitioning from “registering” third-party players to “licensing” them.

(a) As expeditiously as possible in light of available program resources, the Bureau shall summon persons registered as primary owners, owners, supervisors, players, and other employees for the purpose of applying for licenses under this chapter. The registration of any registrant that fails or refuses to submit the applicable Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433 (Rev. 10/17)) or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434 (Rev. 10/17)), which are hereby incorporated by reference, including any fees to the Bureau within 30 days of receiving a summons shall expire by operation of law on the following day. Prior to and during review of a request to convert a registration to a license, a registration shall remain valid and may be renewed by the registrant as necessary, upon application and approval of renewal of registration as provided in Section 12203A.

(b) Any person who became affiliated with a primary owner following receipt of a summons from the Bureau shall apply for registration pursuant to this chapter and shall be called forward by the Bureau expeditiously.

(c) If the registration expires by operation of law, the former registrant shall submit a new Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433) or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434), which are referenced in subsection (a), and a new nonrefundable application fee as specified in paragraph (1), and the applicable additional fee specified in paragraph (3), (4), or (5) of subsection (d) of Section 12008.

(Cal. Code Regs., tit. 4, § 12205.1.)

17. A third-party player summoned by the Bureau to apply for a license shall submit a request to convert a registration to a license pursuant to California Code of Regulations, title 4, section 12218, subdivision (a). The following must be included with the request:

(1) A completed Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433)

or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434), referenced in Section 12205.1.

(2) If applicable, the Trust Supplemental Background Investigation Information, BGC-APP-143 (Rev. 05/08), referenced in Section 12342 of this division.

(3) The applicable nonrefundable application fee in the amount specified in subsection (d) of Section 12008.

(4) Two 2x2 inch color passport-style photographs of a requester that is an individual taken no more than one year before submission of the request to the Bureau.

(5) The supplemental information package as defined in Section 12200(b).

(6) A sum of money that, in the judgment of the Chief of the Bureau, will be adequate to pay the anticipated investigation and processing costs, in accordance with Business and Professions Code sections 19867 and 19984(c).

(7) A copy of the summons issued by the Bureau.

(Cal. Code Regs., tit. 4, § 12218, subd. (c).)

#### STATUTORY BASES FOR DENIAL ALLEGED IN STATEMENT OF ISSUES

18. Business and Professions Code section 19854 provides:

(a) Every key employee shall apply for and obtain a key employee license.

(b) No person may be issued a key employee license unless the person would qualify for a state gambling license.

(c)(1) Except as provided in paragraph (2), a key employee license shall entitle the holder to work as a key employee in any key employee position at any gambling establishment, provided that the key employee terminates employment with one gambling establishment before commencing work for another.

(2) Notwithstanding paragraph (1), a key employee with a valid personal portable license may work as a key employee in any

key employee position in more than one gambling establishment.

(d) The commission shall establish a program for portable personal licenses for key employees, as well as a process by which valid key employee licenses then in effect shall be converted to personal portable licenses. The commission may, as part of that process, establish a fee to be paid by a key employee when seeking a personal portable license. The commission shall seek to implement the requirements imposed by this subdivision on or before July 1, 2008.

19. The Commission shall deny an application for licensure unless it is convinced the applicant is:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(Bus. & Prof. Code, § 19857.)

20. An applicant for licensure is disqualified and the Commission must deny his application for:

Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(Bus. & Prof. Code, § 19859, subd. (b).)

21. Business and Professions Code section 19866 provides: “An applicant for licensing or for any approval or consent required by this chapter, shall make full and true disclosure of all information to the department and the commission as necessary to carry out the policies of this state relating to licensing, registration, and control of gambling.”

### *Cause for Denial*

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

23. The persuasive evidence established respondent answered the questions on his renewal application and responded to the Bureau's subsequent inquiries about his financial interest in the 500 Club completely and truthfully. The evidence further established no one else from the Bureau or the Commission asked him any questions that would have required him to disclose his financial interest in the 500 Club in order for his answers to be complete and truthful, and the Commission does not consider information about an applicant's financial interest in a business that conducts lawful gambling *in California* material to his suitability for licensure. There is no statute or regulation requiring him to voluntarily disclose such information. Finally, the evidence established respondent did not believe he was required to volunteer information about the construction loan to the Bureau or the Commission, and he did not conspire with any of the joint venturers to conceal such information from the Bureau or the Commission. Therefore, no cause exists pursuant to Business and Professions Code section 19857, subdivisions (a) and (b), to deny his renewal application.

24. For the reasons explained in Legal Conclusion 23, no cause exists pursuant to Business and Professions Code section 19859, subdivision (b), to deny respondent's renewal application.

25. Contrary to complainant's argument, Business and Professions Code section 19866 does not require an applicant to disclose any information to the Bureau or the Commission. Instead, the statute requires an applicant to make complete and truthful disclosures when providing information to the Bureau and the Commission. For the reasons explained in Legal Conclusion 23, no cause exists pursuant to Business and Professions Code section 19866 to deny respondent's renewal application.

### *Conclusion*

26. No cause exists to deny respondent's Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee pursuant to Business and Professions Code sections 19854, 19857, subdivisions (a) and (b), 19859, subdivision (b), or 19866, for the reasons explained in Legal Conclusions 22 through 25, individually and collectively. Therefore, his application should be granted, and his license should be renewed.

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### *Costs of Prosecution*

27. Business and Professions Code section 19930, subdivision (d), provides:

In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the department the reasonable costs of the investigation and prosecution of the case.

“Costs” include “the preparation and prosecution of the case by the Office of the Attorney General.” (Bus. & Prof. Code, § 19930, subd. (f)(2).)

28. California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

29. No legal basis exists for awarding costs pursuant to Business and Professions Code section 19930, subdivision (d), for the reasons explained in Legal Conclusions 26 and 27, and none are awarded.

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ORDER

1. Respondent Joseph Frederick Capps's Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee submitted to the Bureau of Gambling Control on January 17, 2015, is GRANTED, and Third-Party Player License No. TPPL-006948 is RENEWED.

2. Complainant's request for an award of costs pursuant to Business and Professions Code section 19930, subdivision (d), is DENIED.

DATED: April 27, 2018

DocuSigned by:

*Coren D. Wong*

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COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings

