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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Third-Party
Proposition Player Services License
Regarding:

JOHN CALDERON MARTINEZ

Applicant.

CGCC Case No. CGCC-2020-1029-14Ciii

DECISION AND ORDER

Hearing Date: June 8, 2021
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) section 12060, in Sacramento, California, and held via Zoom video conference, on June 8, 2021.

James Waian, Deputy Attorney General, State of California (DAG Waian), represented complainant Yolanda Morrow, Acting Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Applicant John Martinez (Martinez) appeared on his own behalf without representation.

During the evidentiary hearing, Presiding Officer Russell Johnson took official notice of the following documents: the Notice and Agenda of Commission Hearing; the Commission’s Conclusion of Prehearing Conference letter; the Commission’s Notice of Hearing with two attachments (1) John Martinez’s application for proposition player services license; and (2) the Bureau’s initial Background Investigation Report; the Bureau’s Statement of Reasons, and Martinez’s signed Notice of Defense.

During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence the following exhibits offered by the Bureau:

- (1) Statement to Respondent, Statement of Reasons, Business and Professions Code sections 19870 and 19871, California Code of Regulations, title 4, section 12060; and April 21, 2021 Declaration of Service by Overnight

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- Carrier, Bates Nos. BGC 001-020;
- (2) November 18, 2020 Executed Notice of Defense form for Martinez, Bates Nos. BGC 021-023;
- (3) Commission Notices:
 - a. January 15, 2021 Notice of Hearing (without enclosures), Bates Nos. BGC 024-029;
 - b. November 3, 2020 Referral of Third-Party Proposition Player Services License to an Evidentiary Hearing for Martinez (without enclosure), Bates Nos. BGC 030-032;
 - c. October 19, 2020 Notice of Scheduled Commission Meeting (App. No. 110638) (with enclosure), Bates Nos. BGC 033-039;
- (4) July 21, 2020, Bureau’s Third-Party Player Initial Background Investigation Report, Level III (with attachments), Bates Nos. BGC 040-056;
- (5) Correspondence regarding Martinez, and between the Bureau and Martinez, Bates Nos. BGC 057-067;
- (6) February 21, 2020 Appointment of Designated Agent for Owners and Proposition Players, for Martinez, Bates Nos. BGC 068-069;
- (7) October 24, 2019 Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee, for Martinez (including Level I Supplemental Information form), Bates Nos. BGC 070-082;
- (8) Registration history for Martinez, Bates No. BGC 083-084;
- (9) Certification of the registration history for Martinez, Bates Nos. BGC 085-086;
- (10) Certified Copy of the (subsequently redacted) Ventura County Sheriff’s Department report regarding the incident that gave rise to Martinez’s misdemeanor conviction for violation of Vehicle Code section 12500,

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subdivision (a), driving without a license, a misdemeanor, in the case of *People of the State of California v. John Calderon Martinez* (Super. Ct. Ventura County, 2006, Case No. 2006042601), Bates Nos. BGC 087-094;

(11) Certified copy of the (subsequently redacted) Ventura County Sheriff’s Department report, including the Oxnard Police Department report, regarding the incident that gave rise to Martinez’s misdemeanor conviction for violation of Penal Code section 243, subdivision (e), domestic battery, a misdemeanor, in the case of *People of the State of California v. John Calderon Martinez* (Super. Ct. Ventura County, 2011, Case No. 2011038332), Bates Nos. BGC 095-102;

- (12) Court records:
- a. Copy of the court records regarding Martinez’s misdemeanor conviction for violations of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol or drugs, a misdemeanor, and Vehicle Code section 23152, subdivision (b), driving under the influence of alcohol or drugs with a blood alcohol level of 0.08 or higher, a misdemeanor, in the case of *People of the State of California v. John Calderon Martinez* (Super. Ct. Ventura County, 2019, Case No. 2018032418), Bates Nos. BGC 103-109;
 - b. Copy of the (subsequently redacted) California Highway Patrol arrest investigation report regarding the incident that gave rise to Martinez’s misdemeanor conviction for violations of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol or drugs, a misdemeanor, and of the Vehicle Code section 23152, subdivision (b), driving under the influence of alcohol or drugs with a blood alcohol level of 0.08 or higher, a misdemeanor, in the case of *People of the State of California v. John Calderon Martinez* (Super. Ct. Ventura

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County, 2019, Case No. 2018032418), Bates Nos. BGC 110-124;
(13) Copy of the October 3, 2019 Criminal Information and Analysis, applicant
fingerprint submission report for Martinez, Bates Nos. BGC 125-128.

The record was closed and the matter was submitted on June 8, 2021.

FINDINGS OF FACT

Procedural History

1. On or about October 7, 2019, the Commission issued Third-Party Proposition Player Services Registration, number TPPL-024142 to Martinez to allow for his employment as a third-party proposition player for Knighted Ventures, LLC.

2. On or about October 24, 2019, the Bureau received an Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee, and a Level I Supplemental Information form (collectively, Application) from Martinez.

3. On or about July 21, 2020, the Commission received a Level III Third-Party Player Initial Background Investigation Report on Martinez from the Bureau. In this report, the Bureau recommends that the Commission deny Martinez’s Application.

4. At its October 29, 2020 meeting, the Commission referred consideration of Martinez’s Application to a Gambling Control Act (GCA) evidentiary hearing to be held pursuant to CCR section 12054, subdivision (a)(2).

5. On or about November 18, 2020, the Commission received a Notice of Defense form signed by Martinez requesting an evidentiary hearing on the consideration of his Application.

6. On or about January 15, 2021, the Commission sent a Notice of Hearing to Martinez and his Designated Agent Priscilla Guzman of Knighted Ventures, LLC, and DAG Waian, providing that an evidentiary hearing would be held before the Commission on June 8, 2021.

7. The Commission received the Bureau’s Statement of Reasons on April 20, 2020. On or about April 21, 2021, the Bureau sent the Statement of Reasons and related documents to Martinez. In the Statement of Reasons, the Bureau requests that the Commission deny Martinez’s Application on the basis that he has five misdemeanor convictions, two of which he failed to

1 disclose on his Application.

2 8. The Commission heard this matter via Zoom video conference on June 8, 2021. The
3 Bureau was represented throughout the hearing by DAG Waian. Martinez appeared on his own
4 behalf without representation.

5 **Martinez's Criminal History**

6 9. A criminal conviction, and the facts and circumstances surrounding the incident
7 leading to the conviction, can have a negative impact on an applicant's suitability for licensure.
8 First, the conviction, and facts and circumstances of the incident leading to the conviction, may
9 lead to a determination that the applicant lacks good character, honesty, and integrity. Second, the
10 conviction, and facts and circumstances of the incident leading to the conviction, may lead to a
11 determination that the applicant poses a risk to the public interest of the state or to the effective
12 regulation and control of controlled gambling. Martinez has five misdemeanor convictions for
13 petty theft, driving without a license, domestic battery, and two convictions stemming from one
14 incident of driving under the influence of alcohol.

15 *Petty Theft*

16 10. On or about August 8, 1983, Martinez was convicted of violating California Penal
17 Code section (PC) 484, subdivision (a), petty theft, a misdemeanor and a crime involving moral
18 turpitude. Martinez was sentenced to ten days in jail and three years of probation. Martinez did
19 not disclose this conviction on his Application.

20 11. Martinez testified that the conviction stemmed from an incident when he was working
21 as a cashier at a retail establishment and kept a customer's cash instead of ringing up an item and
22 placing the cash in the register. The customer was part of an undercover operation. Martinez
23 testified that he was having financial issues at the time, was "stupid and young," and regretted his
24 actions.

25 *Driving without a License*

26 12. On or about December 6, 2006, Martinez was convicted of violating California
27 Vehicle Code (VC) section 12500, subdivision (a), driving without a license, a misdemeanor.
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1 Martinez was sentenced to two days in jail.

2 13. Martinez testified that he didn't realize that his license had expired. Martinez had
3 recently moved several times and was unaware of an outstanding warrant for his arrest. Martinez
4 testified that he complied with all requirements of the conviction and keeps better track of his
5 license expiration date now.

6 14. There were some discrepancies between Martinez's memory of events leading to his
7 conviction for driving without a license and the factual information contained in records offered
8 by the Bureau. For instance, there was a discrepancy as to whether Martinez owned the vehicle at
9 the time that he was pulled over or was in the process of purchasing it from his son's friend; what
10 led to the issuance of a warrant for his arrest; and whether he handed officers an expired driver's
11 license or a California ID card. However, the differences between Martinez's recollection and the
12 documentary evidence appears to be caused by his poor memory and not based on an attempt to
13 conceal the conviction. Martinez disclosed this conviction on the Application and provided a
14 written explanation to the Bureau of his recollection of events during the course of the
15 background investigation.

16 *Domestic Battery*

17 15. On or about December 6, 2011, Martinez was convicted of violating PC section 243,
18 subdivision (e), domestic battery, a misdemeanor. Martinez was sentenced to three days in jail,
19 three years of probation, and ordered to complete an anger management program. Martinez did
20 not disclose this conviction on his Application.

21 16. This conviction arose from a disagreement outside a restaurant between Martinez and
22 his fiancé wherein Martinez took her cell phone and car keys. Martinez ultimately returned the
23 items by throwing the keys next to the vehicle and later gave the phone to his fiancé's son. The
24 incident did not involve a physical altercation other than the taking of the phone and keys.
25 Martinez testified that he and his fiancé worked through this "one time bad incident," and have
26 been together for 20 years.

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1 *Driving Under the Influence of Alcohol*

2 17. On or about February 27, 2019, Martinez was convicted of violating VC section
3 23152, subdivision (a), driving under the influence (DUI) of alcohol, and VC section 23152,
4 subdivision (b), DUI with a blood alcohol of .08 percent or higher, both misdemeanors. Martinez
5 was sentenced to six days in jail, three years of probation, ordered to complete a First Offender
6 DUI Program, and pay a fine, restitution, and court fees. Martinez disclosed these convictions on
7 his Application.

8 18. Martinez testified that he felt lucky that no one was injured due to his DUI and it was
9 a scary moment for him to realize that he could have impacted someone else's life. Martinez
10 testified that he would never drive under the influence of alcohol again. Martinez is still working
11 on paying the fine from this conviction. However, he has complied with the other sentence terms.

12 **Failure to Disclose 1983 Petty Theft and 2011 Domestic Battery Convictions**

13 19. The failure of an applicant to provide accurate, complete, and truthful information on
14 an application for licensure, in response to Bureau inquiries, and while testifying at an evidentiary
15 hearing, can also have a negative impact on the applicant's suitability for licensure. Martinez did
16 not disclose his petty theft and domestic battery convictions on his Application.

17 20. Martinez was not required to list the petty theft conviction on the criminal history
18 section of the Application due to the age of the conviction. However, on the supplemental form,
19 section 4, questions 4 and 5, required Martinez to disclose (with no time limitation) whether he
20 had ever engaged in an act involving dishonesty or moral turpitude charged or chargeable as a
21 criminal offense, and if he had ever been convicted of an offense involving dishonesty or moral
22 turpitude. Petty theft is a crime that has been found by California courts to involve moral
23 turpitude and it is also a crime involving dishonesty. Therefore, the petty theft conviction should
24 have been disclosed by Martinez on the supplemental portion of the Application.

25 21. Martinez testified that he answered the questions on the Application truthfully based
26 on his recollection at the time he filled it out. Martinez testified that he had blocked the theft
27 conviction out of his mind completely because it occurred so long ago. Martinez testified that the
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1 conviction has never impacted his ability to work in fields that required him to undergo criminal
2 background investigations, such as positions in banking, retail, and human resources.

3 22. Martinez also failed to disclose the 2011 conviction for domestic battery on the
4 Application. Martinez testified that he thought this conviction was “purged off” his record
5 because he paid the fines and completed probation. Martinez testified that he had undergone a
6 criminal background check by Veritable Screening on behalf of Barrington Temp. Agency,
7 shortly before he started working for Knighted Ventures. The Veritable Screening background
8 report did not list the 2011 conviction. Martinez testified he used the Veritable Screening
9 background report as a reference when he filled out the Application.

10 **Assessment of Suitability for Licensure**

11 23. As a result of the Bureau’s background investigation, there are two issues of concern
12 regarding Martinez’s suitability for licensure. The first concern arises from the fact that Martinez
13 has five misdemeanor convictions. The second concern involves Martinez’s failure to disclose
14 two of the convictions on his Application.

15 *First Concern: Five Misdemeanor Convictions*

16 24. During the evidentiary hearing, Martinez expressed genuine remorse for the incidents
17 leading to his convictions. Martinez testified that his criminal convictions were mistakes he had
18 made in the past when he was young and that he should have been more responsible.

19 25. Martinez testified that he has not had any issues working in controlled gambling, that
20 he has a clean employment record, and that he demonstrates professionalism at work. Martinez
21 testified that he is an honest and dependable employee and he takes his job seriously.

22 26. Martinez testified that he has many years of work experience in positions where he
23 was trusted with cash, valuables, and access to confidential information. Martinez has worked in
24 retail for approximately ten years and worked as a payroll manager for approximately fifteen
25 years. Other than the 1983 theft conviction, Martinez has had no derogatory employment-related
26 incidents or accusations of theft or dishonesty against him.

27 27. Based on the foregoing factual findings, Martinez’s criminal convictions are
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1 insufficient to demonstrate a lack of good character, honesty, or integrity, or that he poses a risk
2 to the public interest of this state or to the effective regulation and control of controlled gambling.

3 28. Martinez has met his burden of demonstrating that he is a person of good character,
4 honesty, and integrity. Martinez demonstrated good character, honesty, and integrity by accepting
5 responsibility and expressing remorse for the incidents that led to his convictions; through his
6 work history in positions that required a high degree of trust and integrity without incident; and
7 by successfully completing all of the terms of his sentences, with the exception of full payment of
8 the fine for the DUI conviction. Because Martinez is still working on paying the fine from his
9 DUI conviction, the Commission finds that it is necessary to place a condition on his license
10 requiring regular reporting to the Bureau on the payment status of the outstanding fine.

11 *Second Concern: Failure to Disclose Two Convictions*

12 29. The Commission finds Martinez's testimony that he forgot about the 1983 theft
13 conviction to be credible. Martinez testified that over the years he has held several positions
14 where he underwent criminal background checks due to job duties involving handling cash and
15 being trusted with access to valuables and sensitive information. The fact that this old conviction
16 was never raised by past employers, makes it plausible that Martinez forgot about the conviction.
17 Based on the age of the conviction, the Commission finds Martinez's explanation credible.

18 30. The Commission also found Martinez's explanation that he believed the domestic
19 battery conviction was purged from his record upon completion of his the terms of his sentence to
20 be credible. The fact that the Veritable Screening background report did not identify the battery
21 conviction furthered Martinez's incorrect belief that the conviction was purged from his criminal
22 record. Martinez provided the Bureau with a copy of the Veritable Screening background report
23 to substantiate his position.

24 31. Further, upon inquiry by the Bureau, Martinez readily admitted to both convictions
25 and provided written statements that were consistent with his testimony at the hearing regarding
26 his reasons for not disclosing them.

27 32. Martinez disclosed what he believed was accurate criminal history information when
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1 he filled out the Application. Based on the foregoing, Martinez's failure to disclose two
2 convictions was due to inadvertence and not due to an intent to deceive the Bureau. Therefore he
3 is not disqualified from licensure for failing to disclose these convictions on the Application.

4 33. All documentary and testimonial evidence submitted by the parties that is not
5 specifically addressed in this Decision and Order was considered but not used by the Commission
6 in making its determination on Martinez's Application.

7 LEGAL CONCLUSIONS

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

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

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

19 37. The Commission has the power to deny any application for a license, permit, or
20 approval for any cause deemed reasonable by the Commission. Business and Professions Code
21 section 19824(b).

22 38. The burden of proving his or her qualifications to receive any license from the
23 Commission is on the applicant. Business and Professions Code section 19856(a).

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

27 40. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
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1 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or
2 her qualifications to receive any license under the GCA. CCR section 12060(i).

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

7 42. An “unqualified person” means a person who is found to be unqualified pursuant to
8 the criteria set forth in Business and Professions Code section 19857, and “disqualified person”
9 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
10 Professions Code section 19859. Business and Professions Code section 19823(b).

11 43. The Commission has the power to limit, condition, or restrict any license for any cause
12 deemed reasonable by the Commission. Business and Professions Code section 10982(b).

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

16 45. An application for a license will be denied if the Commission finds that the applicant
17 has not satisfied the requirements of Business and Professions Code section 19857. CCR section
18 12040(a)(1).

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

24 47. An application for a license will be denied if the Commission finds that any of the
25 provisions of Business and Professions Code section 19859 apply to the applicant. CCR section
26 12040(a)(2).

27 48. Martinez met his burden of demonstrating that he is a person of good character,
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1 honesty and integrity pursuant to Business and Professions Code section 19857(a). Therefore,
2 Martinez is qualified to receive a Third-Party Proposition Player License pursuant to Business
3 and Professions Code section 19857(a) and not subject to denial pursuant to CCR section
4 12040(a)(1).

5 49. Martinez has also met his burden of demonstrating that with an appropriate condition,
6 he is a person whose prior activities, reputation, habits, and associations do not pose a threat to
7 the public interest of this state, or to the effective regulation and control of controlled gambling,
8 or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities
9 in the conduct of controlled gambling or in the carrying on of the business and financial
10 arrangements incidental thereto. Therefore, Martinez is qualified to receive a Third-Party
11 Proposition Player License pursuant to Business and Professions Code section 19857(b) and not
12 subject to denial pursuant to CCR section 12040(a)(1).

13 50. Finally, Martinez has met his burden of demonstrating that he is not disqualified from
14 receiving a Third-Party Proposition Player Services License pursuant to Business and Professions
15 Code section 19859 and not subject to denial pursuant to CCR section 12040(a)(2).

16 51. Based on the foregoing, Martinez is qualified to receive a Third-Party Proposition
17 Player Services License.

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NOTICE OF APPLICANT’S APPEAL RIGHTS

Martinez has the following appeal rights available under state law:

CCR section 12064, subsections (a) and (b) provide, in part:

(a) After the Commission issues a decision following a GCA hearing conducted pursuant to Section 12060, an applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission. A request for reconsideration must be:

- (1) Made in writing to the Commission, copied to the Complainant. The Bureau may provide a written response to the Commission within 10 calendar days of receipt of the request; and
- (2) Received by the Commission and Complainant within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is earlier.

(b) A request for reconsideration must state the reasons for the request, which must be based upon either:

- (1) Newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission’s issuance of the decision or at the hearing on the matter; or,
- (2) Other good cause which the Commission may decide, in its sole discretion, merits reconsideration.

Business and Professions Code section 19870, subdivision (e) provides:

A decision of the commission denying a license or approval, or imposing any condition or restriction on the grant of a license or approval may be reviewed by 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.

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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1 **ORDER**

2 1. John Calderon Martinez's Application for Third-Party Proposition Player License is
3 APPROVED with the following condition:

4 a. Every 60 days following this order's effective date Martinez must update the
5 Bureau on the status of payment of outstanding fines stemming from his 2019 DUI
6 convictions until resolved.

7 2. No costs are awarded.


8 3. Each side to pay its own attorneys' fees.

9 This Order is effective on August 19, 2021.

10 Dated: 7/20/21

11 Signature: 
12 Paula LaBrie, Chair

13 Dated: 7/20/2021

14 Signature: 
15 Cathleen Galgiani, Commissioner

16 Dated: 7/20/2021

17 Signature: 
18 Eric Heins, Commissioner

19 Dated: 7.20.21

20 Signature: 
21 William Liu, Commissioner

22 Dated: 7/20/21

23 Signature: 
24 Edward Yee, Commissioner