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**BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Regarding:

**KMGI, INC. (GEOW-003709), financial
interest holder in Club One Casino, Inc.;**

**KYLE KIRKLAND (GEOW-003177); and
DANA MESSINA (GEOW-003176)**

**1033 Van Ness Avenue
Fresno, CA 93721,**

Respondents.

BGC Case No. BGC-HQ2022-00011SL
OAH No.
STATEMENT OF ISSUES

1 Complainant alleges:

2 **PARTIES**

3 1. Yolanda Morrow (Complainant) brings this Statement of Issues solely in her
4 official capacity as the acting Director of the California Department of Justice, Bureau of
5 Gambling Control (Bureau).

6 2. Respondent KMGI, Inc. (Corporation), prospective license number GEOW-
7 003709, is a financial interest holder in Club One Casino (Casino), which is licensed as a
8 gambling establishment (GEGE-001121) under the Gambling Control Act (Act) (Bus. & Prof.
9 Code, § 19800 et seq.). The Casino is 51-table card room located in Fresno, California.

10 3. Respondent Kyle Kirkland (Mr. Kirkland), license number GEOW-003177, is a
11 50-percent shareholder of the Corporation. Mr. Kirkland also holds a 50-percent ownership
12 interest in Club One Casino, Inc., the gambling enterprise that owns and operates the Casino.

13 4. Respondent Dana Messina (Mr. Messina), license number GEOW-003176, is a 50-
14 percent shareholder, as well as an officer and director, of the Corporation. Mr. Messina also
15 holds a 50-percent ownership interest in Club One Casino, Inc., the gambling enterprise that owns
16 and operates the Casino.

17 5. The Corporation, Mr. Kirkland, and Mr. Messina are referred to collectively as
18 “Respondents” in this Statement of Issues.

19 **THE APPLICATIONS AND REFERRAL**

20 6. Respondents submitted applications for licensing in connection with the
21 Corporation’s affiliation as a financial interest holder in Club One Casino, Inc. Mr. Kirkland and
22 Mr. Messina seek licensure as the Corporation’s owners, officers, and directors.

23 7. On August 27, 2020, the California Gambling Control Commission (Commission)
24 considered Respondents’ applications and referred a determination of Respondents’ suitability for
25 licensure to a hearing to be held under the Administrative Procedure Act (APA) (Gov. Code, §
26 11500, et seq.). (Bus. & Prof. Code, § 19825; Cal. Code. Regs, tit. 4, §§ 12056, 12058.) The
27 hearing on Respondents’ suitability is to be consolidated with the hearing on *In the Matter of the*
28 *Statement of Issues Regarding: Club One Casino, Inc., et al.* (BGC Case No. BGC-HQ2015-

1 00018SL) (Club One Matter). Complainant's predecessor filed the Club One Matter on July 15,
2 2019.

3 **JURISDICTION, BURDEN OF PROOF, AND COST RECOVERY**

4 8. The Commission has jurisdiction over the operation and concentration of gambling
5 establishments and all persons and things having to do with the operation of gambling
6 establishments. (Bus. & Prof. Code, § 19811, subd. (b).) The Commission has all powers
7 necessary and proper to enable it fully and effectually to carry out the policies and purposes of the
8 Act including denying any application for a license. (Bus. & Prof. Code, § 19824, subd. (b).)
9 The Commission may require matters to be heard and determined in an administrative proceeding
10 under the APA. (Bus. & Prof. Code, § 19825.)

11 9. Applicants, such as Respondents, have the burden to prove they are qualified to be
12 issued a state gambling license. (Bus. & Prof. Code, § 19856, subd. (a); see also Gov. Code, §
13 11504.) Failure of either Mr. Kirkland or Mr. Messina to obtain a license will render the
14 Corporation unsuitable for licensure. (Bus. & Prof. Code, §§ 19850, 19852, subd. (a), 19859,
15 subd. (a), 19922.) The Corporation is not eligible for licensing if any of its shareholders,
16 directors, or officers is not licensed. (Bus. & Prof. Code, § 19852, subd. (a).)

17 10. In a matter involving denial of a license application, the Bureau may recover its
18 costs of investigation and prosecuting the proceeding. (Bus. & Prof. Code, § 19930, subd. (d).)

19 **SUMMARY OF CASE**

20 11. The Act is an exercise of the police power of the State of California intended to
21 protect the public's health, safety and welfare, and shall be liberally interpreted to effectuate that
22 purpose. (Bus. & Prof. Code, § 19971.) The Act protects the public by assuring that only
23 qualified persons are licensed to own, operate, and manage card rooms. (Bus. & Prof. Code, §
24 19801, subds. (i), (k).) The Act establishes certain criteria for qualification for licensure. (Bus. &
25 Prof. Code, § 19857.) The failure to establish clearly these criteria requires mandatory denial of a
26 license application. (Bus. & Prof. Code, § 19859, subd. (a).) The Act requires an applicant for
27 licensing to make full and true disclosure to the Bureau and the Commission of all information
28

1 necessary to carry out the state’s policies relating to licensing and control of gambling. (Bus. &
2 Prof. Code, § 19866.)

3 12. This proceeding seeks to deny Respondents’ applications and the recovery of the
4 Bureau’s costs. By cumulative conduct spanning a number of years, Mr. Kirkland and Mr.
5 Messina demonstrated that they do not satisfy the criteria for qualification and, therefore, are not
6 suitable for licensure. Specifically, Mr. Kirkland and Mr. Messina engaged in the conduct alleged
7 in the Statement of Issues filed in the Club One Matter, which is attached as Exhibit A and
8 incorporated herein in its entirety. If Mr. Kirkland or Mr. Messina is unqualified for, or
9 disqualified from, licensure as alleged in the Club One Matter, he is unqualified for, or disqualified
10 from, licensure as the Corporation’s owner, officer, or director.

11 **FIRST CAUSE FOR DENIAL**

12 **(Unqualified for Lack of Good Character, Honesty, and Integrity)**

13 13. The cumulative facts and conduct alleged in the Club One Matter demonstrate that
14 Mr. Kirkland and Mr. Messina are not qualified for licensure. Accordingly, the Commission
15 should deny Respondents’ renewal applications. Mr. Kirkland and Mr. Messina cannot establish
16 they are persons of good character, honesty, and integrity.

17 (Bus. & Prof. Code, §§ 19856, 19857, subd. (a), 19859, subd. (a), 19866; see also Cal. Code
18 Regs., tit. 4, §§ 12346, subd. (a)(1), 12568, subd. (c)(3) & (4).)

19 **SECOND CAUSE FOR DENIAL**

20 **(Unqualified for Posing a Threat to the Public Interest and Effective Regulation)**

21 14. The cumulative facts and conduct alleged in the Club One Matter demonstrate that
22 Mr. Kirkland and Mr. Messina are not qualified for licensure. Accordingly, the Commission
23 should deny Respondents’ renewal applications. Mr. Kirkland and Mr. Messina’s prior activities
24 show that they pose a threat to the public interest or to the effective regulation and control of
25 controlled gambling.

26 (Bus. & Prof. Code, §§ 19856, 19857, subd. (b), 19859, subd. (a), 19866; see also Cal. Code
27 Regs., tit. 4, §§ 12346, subd. (a)(1), 12568, subd. (c)(3) & (4).)

1 **THIRD CAUSE FOR DENIAL**

2 **(Unqualified for Dangers of Unsuitable or Unfair Practices)**

3 15. The cumulative facts and conduct alleged in the Club One Matter demonstrate that
4 Mr. Kirkland and Mr. Messina are not qualified for licensure. Accordingly, the Commission
5 should deny Respondents’ renewal applications. Mr. Kirkland and Mr. Messina’s prior activities
6 show that they create or enhance the dangers of unsuitable or unfair practices, methods, and
7 activities in carrying on the business of, and the financial arrangements incidental to, controlled
8 gambling.

9 (Bus. & Prof. Code, §§ 19856, 19857, subd. (b), 19859, subd. (a), 19866; see also Cal. Code
10 Regs., tit. 4, §§ 12346, subd. (a)(1), 12568, subd. (c)(3) & (4).)

11 **PRAYER**

12 WHEREFORE, Complainant respectfully requests that a hearing be held on the matters
13 herein alleged, and that following the hearing, the Commission issue a decision:

- 14 1. Denying the application of Respondent Kyle Kirkland;
- 15 2. Denying the application of Respondent Dana Messina;
- 16 3. Denying the application of Respondent KMGI, Inc.;
- 17 4. Awarding the Bureau the costs of investigation and costs of bringing this

18 Statement of Issues before the Commission, pursuant to Business and Professions Code section
19 19930, subdivisions (d) and (f), in a sum according to proof; and

- 20 5. Taking such other and further action as the Commission may deem appropriate.

21 Dated: June 1, 2022

22 

23 YOLANDA MORROW, Acting Director
24 Bureau of Gambling Control
25 California Department of Justice

26 Complainant

EXHIBIT A

STATEMENT OF ISSUES

In the Matter of the Statement of Issues Regarding: Club One Casino, Inc., et al.
(BGC Case No. BGC-HQ2015-00018SL)



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11 **BEFORE THE**
 12 **CALIFORNIA GAMBLING CONTROL COMMISSION**
 13 **STATE OF CALIFORNIA**

15 In the Matter of the Statement of Issues
 16 Regarding:

BGC Case No. BGC-HQ2015-00018SL

OAH No. _____

17 **CLUB ONE CASINO, INC. (GEGE-**
 18 **001121), doing business as CLUB ONE**
 19 **CASINO;**

STATEMENT OF ISSUES

20 **KYLE KIRKLAND (GEOW-003177); and**
 21 **DANA MESSINA (GEOW-003175)**

22 **1300 Van Ness Avenue**
Fresno, CA 93721

23 **Respondents.**

1 Complainant alleges:

2 **PARTIES**

3 1. Stephanie Shimazu (Complainant) brings this Statement of Issues solely in her
4 official capacity as the Director of the California Department of Justice, Bureau of Gambling
5 Control (Bureau).

6 2. Club One Casino, Inc. (Respondent Corporation) is licensed as a gambling
7 enterprise (GEGE-001121) under the Gambling Control Act (Act) (Bus. & Prof. Code, § 19800 et
8 seq.). Respondent Corporation does business as Club One Casino (Club One), which is a 51-table
9 card room located 1300 Van Ness Avenue in Fresno, California.

10 3. Respondent Kyle Kirkland (Respondent Kirkland) is an officer, director, and a 50-
11 percent shareholder of Respondent Corporation. Respondent Kirkland, license number GEOW-
12 003177, is endorsed¹ on Club One’s state gambling license.

13 4. Respondent Dana Messina (Respondent Messina) is an officer, director, and a 50-
14 percent shareholder of Respondent Corporation. Respondent Messina, license number GEOW-
15 003175, is endorsed on Club One’s state gambling license.

16 5. Respondent Corporation, Respondent Kirkland, and Respondent Messina are
17 referred to collectively as “Respondents” in this Statement of Issues. The California Gambling
18 Control Commission (Commission) initially issued Respondents’ licenses pursuant to the Act.
19 Each Respondent holds an interim renewal license issued by the Commission. (Cal. Code Regs.,
20 tit. 4, § 12035, subd. (a)(1).)²

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24 _____
25 ¹ Pursuant to Business and Professions Code section 19851, subdivision (b), individual
26 persons, who “obtain a state gambling license, as required by [the Act] shall not receive a
separate license certificate, but the license of every such person shall be endorsed on the license
certificate that is issued to the owner of the gambling enterprise.”

27 ² Appendix A quotes the statutes and regulations applicable to this Statement of Issues in
28 pertinent part.

1 **THE PENDING RENEWAL APPLICATIONS³**

2 6. On March 2, 2015, the Bureau received an application for renewal of a state
3 gambling license from Respondent Corporation.

4 7. On March 2, 2015, Respondent Kirkland submitted an application to renew his
5 license.

6 8. On February 27, 2015, Respondent Messina submitted an application to renew his
7 license.

8 9. On or about May 15, 2015, the Bureau issued a Gambling Establishment and
9 Owner Application Review - Level II for Respondents' applications to renew their licenses
10 (renewal applications). In that review, the Bureau identified as an area of concern a New York
11 Supreme Court post-trial decision and order (New York Order), filed October 21, 2014, that
12 brought into question the character, honesty, and integrity of Respondents Kirkland and Messina.
13 Appendix B is a true and complete copy of the New York Order.

14 10. On June 25, 2015, the Commission considered Respondents' renewal applications
15 and referred a determination of Respondents' suitability for licensure to a hearing to be held under
16 the Administrative Procedure Act (APA) (Gov. Code, § 11500, et seq.).⁴ (Bus. & Prof. Code, §
17 19825; Cal. Code. Regs, tit. 4, §§ 12056, 12058.)
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19
20
21 ³ Under the Act, renewal applications are subject to the Commission's power to deny,
22 revoke, suspend, condition, or limit any license. (Bus. & Prof. Code, § 19876, subd. (a).)

23 ⁴ When the Commission referred this matter to a suitability hearing in 2015, the referral
24 included Respondent Corporation and the Club One Acquisition Corporation (COAC), which
25 were both on the state gambling enterprise license (GEGE- 001121), as well as Haeg Kelegian
26 (Mr. Kelegian), George Sarantos (Mr. Sarantos), Respondent Kirkland, and Respondent Messina
27 as endorsees for COAC. Respondent Kirkland and Respondent Messina were also endorsees for
28 Respondent Corporation. However, in a subsequent Chapter 11 bankruptcy reorganization,
COAC merged with Respondent Corporation, leaving Respondent Corporation as the sole entity
emerging from the bankruptcy and Respondent Kirkland and Respondent Messina as its only
shareholders. Accordingly, this Statement of Issues pertains only to the suitability for licensure
of Respondent Corporation, as the gambling enterprise, and Respondent Kirkland and Respondent
Messina, as its shareholders, officers, and directors.

1 **JURISDICTION, BURDEN OF PROOF, AND COST RECOVERY**

2 11. The Commission has jurisdiction over the operation and concentration of gambling
3 establishments and all persons and things having to do with the operation of gambling
4 establishments. (Bus. & Prof. Code, § 19811, subd. (b).) The Commission has all powers
5 necessary and proper to enable it fully and effectually to carry out the policies and purposes of the
6 Act including denying any application for a license. (Bus. & Prof. Code, § 19824, subd. (b).)
7 The Commission may require matters to be heard and determined in an administrative proceeding
8 under the APA. (Bus. & Prof. Code, § 19825.)

9 12. An applicant, such as Respondents, has the burden to prove they are qualified to be
10 issued a state gambling license. (Bus. & Prof. Code, § 19856, subd. (a); see also Gov. Code, §
11 11504.) Failure of any Respondent to obtain a renewal license will render Club One unsuitable
12 for licensure. (Bus. & Prof. Code, §§ 19850, 19852, subd. (a), 19859, subd. (a), 19922.)
13 Respondent Corporation is not eligible for licensing if either of its shareholders, directors, or
14 officers is not licensed. (Bus. & Prof. Code, § 19852, subd. (a).)

15 13. In a matter involving denial of a license application, the Bureau may recover its
16 costs of investigation and prosecuting the proceeding. (Bus. & Prof. Code, § 19930, subd. (d).)

17 **SUMMARY OF CASE**

18 14. The Act is an exercise of the police power of the State of California intended to
19 protect the public’s health, safety and welfare, and shall be liberally interpreted to effectuate that
20 purpose. (Bus. & Prof. Code, § 19971.) The Act protects the public by assuring that only
21 qualified persons are licensed to own, operate, and manage card rooms. (Bus. & Prof. Code, §
22 19801, subds. (i), (k).) The Act establishes certain criteria for qualification for licensure. (Bus. &
23 Prof. Code, § 19857.) The failure to establish clearly these criteria requires mandatory denial of a
24 license application. (Bus. & Prof. Code, § 19859, subd. (a).) The Act requires an applicant for
25 licensing to make full and true disclosure to the Bureau and the Commission of all information
26 necessary to carry out the state’s policies relating to licensing and control of gambling. (Bus. &
27 Prof. Code, § 19866.)

1 15. This proceeding seeks to deny Respondents’ renewal applications and the recovery
2 of the Bureau’s costs. By cumulative conduct spanning a number of years, Respondents
3 demonstrated that they do not satisfy the criteria for qualification and, therefore, are not suitable
4 for licensure. Specifically, Respondents engaged in conduct that, among other things:

- 5 a. Breached the implied covenant of good faith and fair dealing in connection with
6 their initial acquisition of and continuing control over Club One;
- 7 b. Endangered Club One’s financial viability and continued operations as a going
8 concern;
- 9 c. Led to a bankruptcy proceeding and reorganization that forced certain creditors
10 and shareholders to take substantially reduced payments on liabilities that
11 Respondents created and that inured to Respondents’ benefit;
- 12 d. Was found by an arbitrator to be less than honest;
- 13 e. Was found by an arbitrator to have given false testimony;
- 14 f. Was found by a judge to be less than honest;
- 15 g. Misled or misrepresented information to the Commission; and
- 16 h. Threatened the public trust and perception that card rooms are operated in a
17 financially responsible and honest manner.

18 FACTUAL BACKGROUND

19 16. Respondent Kirkland and Respondent Messina formerly held securities licenses.
20 In 1994, they organized an investment advisory firm that assisted clients with arranging leveraged
21 buyouts and corporate financing. Before their investments in Club One, Respondent Kirkland
22 and Respondent Messina, individually or together, provided investment advisory services to
23 certain California card rooms. Respondent Kirkland and Respondent Messina hold themselves
24 out to be sophisticated businesspersons.

25 A. Securities Licensing Sanctions Against Respondent Kirkland

26 17. On September 28, 2001, the U.S. Securities and Exchange Commission (SEC)
27 entered an Order Instituting Public Administrative and Cease-and-Desist Proceeding, Making
28 Findings and Imposing Sanctions and Cease-and-Desist Order (SEC Order) against Respondent

1 Kirkland. There, pursuant to a settlement, the SEC found that Respondent Kirkland provided
2 misleading market values of securities to a mutual fund and an offshore fund. He accepted a
3 three-year bar from the securities industry and agreed to pay a \$30,000 fine. Appendix C is a true
4 and complete copy of the SEC Order.

5 **B. Acquisition of Club One and Failure To Pay Certain Contractual Obligations**

6 18. Respondent Corporation was formed in 1994. In July 2006, Respondent
7 Corporation's then shareholders, Mr. Sarantos and Elaine Long (Ms. Long) (collectively, Sellers),
8 entered into a letter of intent with Respondent Kirkland and Respondent Messina for the purchase
9 and sale of Respondent Corporation's stock for \$27 million. On February 24, 2007, the parties
10 signed an Agreement for Purchase and Sale of Stock (PSA).

11 19. The stock transaction closed on February 22, 2008. Before the closing,
12 Respondent Kirkland and Respondent Messina conducted extensive due diligence, which
13 included unrestricted opportunities to inspect Club One's physical and financial condition. They
14 had full access to Respondent Corporation's books and records.

15 20. In the stock transaction, COAC acquired Sellers' stock in Respondent Corporation
16 for \$27 million. After the closing, Respondent Kirkland and Respondent held 80 percent of
17 COAC's stock; Mr. Sarantos held 17 percent; and Mr. Kelegian held three percent. The stock
18 transaction was highly leveraged. COAC borrowed \$22.5 million (Senior Loan), which
19 Respondent Corporation agreed to pay and was secured by Club One's assets, from an investment
20 lender. Sellers held unsecured notes (Seller Notes) payable by Respondent Corporation totaling
21 \$5 million. The Senior Loan was payable February 22, 2012. The Seller Notes were subordinate
22 to the Senior Loan and payable on February 22, 2015. Respondent Kirkland and Respondent
23 Messina, jointly and severally, personally guaranteed \$7 million of the Senior Loan.

24 21. The PSA provided for a purchase price adjustment to be calculated after the stock
25 transaction closed. Respondent Kirkland and Respondent Messina disagreed with Sellers
26 regarding the amount of the purchase price adjustment. Sellers claimed the adjustment should be
27 approximately \$1 million; Respondent Kirkland and Respondent Messina eventually claimed the
28 adjustment should be approximately \$23,000. Respondent Messina, however, advised the lender

1 on the Senior Loan: “We are being as aggressive as possible . . . and will hopefully save a few
2 dollars. . . . Originally we expected to pay out \$1.5 million in the [adjustment] but are working
3 hard to keep the number below \$1 million.”

4 22. COAC did not pay the purchase price adjustment even though Club One had
5 sufficient cash to pay. On December 30, 2008, Sellers filed demands in arbitration seeking
6 approximately \$1 million as a purchase price adjustment. Rather than pay, Respondent Kirkland
7 and Respondent Messina caused COAC to assert counterclaims in the arbitration. On April 12,
8 2011, the arbitrator issued an interim award in favor of Sellers, finding that the proper adjustment
9 was approximately \$1 million and denying COAC’s counterclaims. On June 27, 2011, the
10 arbitrator awarded Sellers pre-award interest totaling approximately \$313,000, attorney fees of
11 approximately \$441,000, and approximately \$140,000 in costs. On July 8, 2011, the arbitrator
12 issued the final award.

13 23. In the interim award, the arbitrator determined that COAC’s counterclaim that
14 Sellers failed to disclose or misrepresented certain information lacked merit. The arbitrator
15 specifically found, among other things, that COAC, through Respondent Kirkland, Respondent
16 Messina, and their agents, “could not have reasonably relied . . . because it either knew, or in the
17 exercise of even minimal due diligence should have known, of any such material facts.”

18 24. By refusing to pay an obligation that Mr. Messina expected to be \$1.5 million, Mr.
19 Kirkland and Mr. Messina had caused COAC to increase a \$1 million obligation into a liability of
20 nearly \$1.9 million on which interest accrued at \$227.00 per day.

21 **C. Arbitral and Judicial Findings Regarding Credibility and Honesty**

22 25. In the interim award, the arbitrator called the credibility of Respondent Kirkland
23 and Respondent Messina into question:

24 The credibility of their assertions is also brought into question . . .
25 i.e. evasive and inconsistent testimony under oath in the hearings,
26 grossly inaccurate and misleading statements made under oath in a
27 pre-hearing declaration . . . , and questionable conduct in submitting
28 a re-engineered financial statement to [COAC’s] lender.

1 26. Rather than pay the award and consequent judgment, Respondent Kirkland and
2 Respondent Messina caused COAC to file an action in the New York Supreme Court to block
3 enforcement of the award and judgment. (*Club One Acquisition Corporation v. George Sarantos*
4 *and Elaine Long, Defendants and KMGI, Inc., Plaintiff-Intervenor*, NYSC Case Number
5 650049/2012 (New York Litigation).) In the New York Litigation, the court entered the New
6 York Order after a non-jury trial. The court determined that COAC breached the covenant of
7 good faith and fair dealing implied in the PSA.

8 27. The New York Order made findings regarding the character, honesty, and integrity
9 of Respondent Kirkland and Respondent Messina. The findings included, among other things,
10 the following:

- 11 a. “[Respondent] Kirkland’s attempt at trial to justify making an adjustment to the
12 [Purchase Price Adjustment] for such taxes was disingenuous.” (New York Order,
13 p. 19.)
- 14 b. “The counterclaim [in the arbitration] was largely bogus” (New York Order,
15 p. 19.)
- 16 c. “In his affidavit presented at trial . . . [Respondent] Kirkland states misleadingly
17 that ‘the Defendants represented in the [PSA] that (a) [t]he financial statements the
18 [sic] provided to me and Mr. Messina were “prepared in accordance with generally
19 accepted accounting principles” and “true, complete and correct in all material
20 respects” In fact, the introductory clause to the sentence from which the
21 quoted language was extracted shows that was not the understanding of the
22 parties.” (New York Order, p. 20.)
- 23 d. “To the extent the counterclaim in arbitration asserted otherwise, it was baseless.”
24 (New York Order, p. 21.)
- 25 e. “. . . [COAC] elected to ‘set-off’ its payment obligations by asserting a meritless
26 counterclaim in violation of its implied pledge not to ‘do anything that will have
27 the effect of destroying or injuring the right of the other party to receive the fruits
28 of the contract’ [citation].” (New York Order, p. 21.)

- 1 f. “. . . [COAC] elected to be ‘as aggressive as possible’ . . . and to breach . . . its
2 contractual obligations. Through a series of subterfuges and evasions, [COAC]
3 and its principals [Respondent Kirkland and Respondent Messina] have succeeded
4 in evading payment properly owed to [Sellers] as of April 2008.” (New York
5 Order, p. 21.)
- 6 g. “After it became evident that [COAC] would not prevail in the arbitration,
7 [Respondent] Messina and [Respondent] Kirkland charted a course of conduct
8 designed to shield themselves from having to pay. Their acts of evasion and
9 obfuscation included (1) pre-payment of principal on the Senior Loan in order to
10 reduce the amount of cash available . . . to pay an expected adverse arbitration
11 award . . . ; (2) successful lobbying of [the Senior Loan holder to] issue a notice
12 designed to shield [COAC] from having to pay the arbitration award . . . ; and (3)
13 failure of [Respondent] Kirkland and [Respondent] Messina to take reasonable
14 measures to avoid a maturity default on February 23, 2012 followed by their
15 purchase of the Senior Loan and paying themselves ‘default interest’ on the Senior
16 Loan” (New York Order, pp. 21-22.)
- 17 h. “[Respondent] Kirkland testified that the [default] notice was prepared ‘[a]t the
18 lenders’ request’ This testimony was false” (New York Order, p. 22, fn.
19 15.)
- 20 i. “[Respondent] Messina and [Respondent] Kirkland . . . (1) orchestrated the breach
21 of the PSA; (2) enlisted the [Senior Loan] Lender’s aid to shield themselves; and
22 (3) are now directing the joint effort of [COAC] and KMGI to further delay
23 payment” (New York Order, p. 24.)

24 28. Rather than perform their obligations as determined in the New York Litigation,
25 Respondent Kirkland and Respondent Messina caused COAC to file an appeal on November 11,
26 2014. In audited financial statements for the year ending December 31, 2014, Respondent
27 Corporation reported that the accrued interest on the arbitration award and consequent judgment
28 exceeded \$975,000. The total liability reported from the arbitration award, consequent judgment,

1 and New York Order exceeded \$2.6 million. Additionally, attorney fees incurred by COAC in
2 prosecuting the case exceeded \$1.4 million.

3 **D. Default on and Acquisition of the Senior Loan**

4 29. In January 2011, Respondent Kirkland and Respondent Messina formed KMGI,
5 Inc. to raise capital to refinance or acquire the Senior Loan, which as alleged above was payable
6 on February 22, 2012. Respondent Kirkland and Respondent Messina were, and continue to be,
7 that corporation's only shareholders.

8 30. In July 2011, using a form of notice drafted by COAC's attorneys, the holder of
9 the Senior Loan notified the Sellers that the arbitration award was subject to the subordination
10 agreement.

11 31. In January 2012, the holder of the Senior Loan gave notice to Respondent
12 Corporation that the Sellers' judgment and writ of execution were events of default. The holder
13 of the Senior Loan exercised its right to convert – i.e., increase – the annual interest rate to 16.5
14 percent.

15 32. On February 22, 2012, Respondent Corporation failed to pay the Senior Loan,
16 constituting another event of default.

17 33. On April 11, 2012, after obtaining the Commission's approval, KMGI, Inc.
18 acquired the Senior Loan. Respondent Kirkland and Respondent Messina chose this alternative
19 to maintain the seniority of the Senior Loan over the Seller Notes and to avoid the need for the
20 consent of Messrs. Sarantos and Kelegian to a particular transaction. Respondent Kirkland and
21 Messina caused KMGI, Inc. to release them of their personal guarantees on the Senior Loan and
22 to continue assessing interest at 16.5 percent. KMGI, Inc. paid \$14.4 million to acquire the
23 Senior Loan, which was the outstanding amount owed. Shortly thereafter, Respondent
24 Corporation reduced the unpaid principal by paying \$400,000 to KMGI, Inc.

25 **E. Respondent Corporation Failed To Pay Principal and Interest on its Indebtedness**

26 34. From and after KMGI, Inc.'s acquisition of the Senior Loan, annual interest
27 accrued in amounts ranging from approximately \$2.3 million to approximately \$3.9 million. By
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1 December 31, 2015, principal and accrued interest payable on the Senior Loan totaled nearly
2 \$24.9 million – more than \$10 million than the amount owed in April 2012.

3 35. Following the notices of default on the Senior Loan, Respondent Corporation
4 ceased paying interest on the Seller Notes, which accrued at the rate of \$500,000 to \$600,000
5 annually. Respondent Corporation failed to pay the Seller Notes at the February 22, 2015
6 maturity.

7 **F. Auditors' Going Concern Qualifications**

8 36. Respondents' conduct alleged in this Statement of Issues affected Club One's
9 ostensible financial viability as an operating card room.

10 a. Club One reported losses ranging between \$3.7 million and \$11.1 million for the
11 years 2012 through 2015. A substantial portion of the reported losses was accrued,
12 but unpaid, interest on the Senior Loan and the Seller Notes. The losses reported
13 for 2012 and 2013 exceeded 89 percent of Club One's revenues derived from
14 offering and providing card games.

15 b. Club One's liabilities exceeded its current and tangible assets in amounts ranging
16 between \$23.8 million and \$34.4 million for the years 2012 through 2015. These
17 deficits were two to three times Club One's annual revenues derived from offering
18 and providing card games.

19 37. Beginning with audited financial statements for the year ending December 31,
20 2011, Respondent Corporation's auditors reported doubt about its ability to continue as a going
21 concern. The financial statements for the 2012, 2013, 2014, and 2015 reported conditions that
22 "raise substantial doubt about the [Respondent Corporation's] ability to continue as a going
23 concern."

24 **G. Bankruptcy Reorganization to Benefit Respondents**

25 38. On October 14, 2015, Respondent Corporation and COAC filed a bankruptcy
26 reorganization proceeding in the United States Bankruptcy Court.

27 39. The bankruptcy court confirmed a reorganization plan, which the Commission
28 approved on August 25, 2016. Under the reorganization plan, Respondent Corporation and

1 COAC merged, and Respondent Corporation emerged as the surviving corporation. On
2 September 9, 2016, Respondent Kirkland and Respondent Messina purchased all Respondent
3 Corporation's outstanding shares.

4 40. Under the reorganization plan, Respondent Corporation eliminated obligations to
5 Sellers, and Respondent Kirkland and Respondent Messina eliminated the minority shareholders.

- 6 a. The Senior Loan held by KMGI, Inc. was reduced to \$7 million. The remaining
7 principal and accrued interest totaling more than \$17 million were discharged.
- 8 b. Sellers were paid a total of \$3 million to (i) settle approximately \$10.5 million in
9 obligations arising from the arbitration, consequent judgment, and New York
10 Litigation and the Seller Notes and (ii) extinguish Mr. Sarantos's 17-percent
11 shareholder interest in COAC.
- 12 c. Accrued management fees of approximately \$2 million payable to an affiliate of
13 Respondent Kirkland and Respondent Messina were discharged.
- 14 d. Approximately \$1.1 million in attorney fees owed from the arbitration and New
15 York Litigation was discharged by the payment of \$350,000.
- 16 e. Mr. Kelegian's three-percent shareholder interest in COAC was extinguished.
- 17 f. As part of a global settlement with Sellers, the New York Order was to be, and
18 ultimately was, vacated.

19 **H. Misleading or Misrepresented Information to the Commission**

20 41. At a September 22, 2011 Commission meeting, Respondent Kirkland stated to the
21 Commission that KMGI, Inc. was a vehicle for him and Respondent Messina to pay off or pay
22 down the Senior Loan and address other debts including the arbitration award and the Seller
23 Notes. The statements were either misleading or misrepresented information. In truth, KMGI,
24 Inc. did not pay off or pay down the Senior Loan. Respondent Kirkland and Respondent Messina
25 rejected that as an alternative and elected to purchase the Senior Loan instead. In truth,
26 Respondent Corporation failed to pay principal and interest on its indebtedness on the Senior
27 Loan and the Seller Notes. In truth, Respondent Kirkland and Respondent Messina caused
28 COAC to file the New York Litigation to continue to avoid fulfilling obligations under the PSA.

1 42. At a March 8, 2012 Commission meeting, Respondent Kirkland stated to the
2 Commission that the Senior Loan holder “told us . . . [it] would like that we wouldn’t pay that any
3 longer.” This was misleading. In truth, COAC attorneys had drafted the notice, and Respondents
4 had been found to have “enlisted” the Senior Loan holder’s aid to avoid paying Sellers.
5 Respondent Messina stated to the Commission that after acquiring the Senior Loan, changes
6 potentially would be made. This was either misleading or misrepresented information. In truth,
7 after acquiring the Senior Loan, no changes were made other than releasing Respondent Kirkland
8 and Respondent Messina of their personal guarantees. Respondents’ agent stated to the
9 Commission, “The goal certainly is to pay, not only the arbitration award in a timely fashion, but
10 also the other notes involved with us.” This was either misleading or misrepresented information.
11 In truth, Respondent Kirkland and Respondent Messina caused COAC to pursue the New York
12 Litigation to continue to avoid fulfilling obligations under the PSA.

13 43. At a September 27, 2012 Commission meeting, Respondents’ agent represented to
14 the Commission that Club One was “one of the most fiscally responsible” card rooms in
15 California. This was misleading or misrepresented information. In truth, Respondent
16 Corporation had defaulted on the Senior Loan, failed to pay principal and interest on its
17 indebtedness on the Senior Loan and the Seller Notes, and raised substantial doubt about its
18 ability to continue as a going concern. Respondent Kirkland stated to the Commission that he
19 was estimating “a couple million dollars” in liability in employment litigation. This was either
20 misleading or misrepresented information. In truth, the audited financial statement for the year
21 ending December 31, 2012, informed with respect to employment litigation: (a) “management”
22 estimated the maximum liability on insured claims to be \$100,000; (b) legal counsel estimated
23 uninsured claims “could range from \$0 to \$700,000”; and (c) management believed the
24 outstanding claims “will be defeated.”
25
26
27
28

1 **FIRST CAUSE FOR DENIAL**

2 **(Unqualified for Lack of Good Character, Honesty, and Integrity)**

3 44. The cumulative facts and conduct alleged in paragraphs 16 to 43 above
4 demonstrate that Respondents are not qualified for licensure. Accordingly, the Commission
5 should deny their renewal applications. Respondents cannot establish they are persons of good
6 character, honesty, and integrity. (Bus. & Prof. Code, §§ 19856, 19857, subd. (a), 19859, subd.
7 (a), 19866; see also Cal. Code Regs., tit. 4, §§ 12346, subd. (a)(1), 12568, subd. (c)(3) & (4).)

8 **SECOND CAUSE FOR DENIAL**

9 **(Unqualified for Posing a Threat to the Public Interest and Effective Regulation)**

10 45. The cumulative facts and conduct alleged in paragraphs 16 to 43 above
11 demonstrate that Respondents are not qualified for licensure. Accordingly, the Commission
12 should deny their renewal applications. Respondents' prior activities show that they pose a threat
13 to the public interest or to the effective regulation and control of controlled gambling. (Bus. &
14 Prof. Code, §§ 19856, 19857, subd. (b), 19859, subd. (a), 19866; see also Cal. Code Regs., tit. 4,
15 §§ 12346, subd. (a)(1), 12568, subd. (c)(3) & (4).)

16 **THIRD CAUSE FOR DENIAL**

17 **(Unqualified for Dangers of Unsuitable or Unfair Practices)**

18 46. The cumulative facts and conduct alleged in paragraphs 16 to 43 above
19 demonstrate that Respondents are not qualified for licensure. Accordingly, the Commission
20 should deny their renewal applications. Respondents' prior activities show that they create or
21 enhance the dangers of unsuitable or unfair practices, methods, and activities in carrying on the
22 business of, and the financial arrangements incidental to, controlled gambling. (Bus. & Prof.
23 Code, §§ 19856, 19857, subd. (b), 19859, subd. (a), 19866; see also Cal. Code Regs., tit. 4, §§
24 12346, subd. (a)(1), 12568, subd. (c)(3) & (4).)

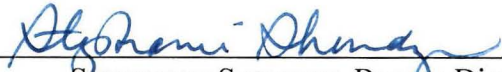
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PRAYER

WHEREFORE, Complainant respectfully requests that a hearing be held on the matters herein alleged, and that following the hearing, the Commission issue a decision:

1. Denying the application of Respondent Club One Casino, Inc. to renew its state gambling license number GEGE-001121;
2. Denying the application of Respondent Kyle Kirkland to renew his state gambling license number GEOW-003177;
3. Denying the application of Respondent Dana Messina to renew his state gambling license number GEOW-003175;
4. Awarding Complainant the costs of investigation and costs of bringing this Statement of Issues before the Commission, pursuant to Business and Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and
5. Taking such other and further action as the Commission may deem appropriate.

Dated: July 10, 2019



STEPHANIE SHIMAZU, Bureau Director
Bureau of Gambling Control
California Department of Justice
Complainant

1 **APPENDIX A**

2 1. Business and Professions Code, section 19801 provides, in part:

3 * * *

4 (g) Public trust that permissible gambling will not endanger public
5 health, safety, or welfare requires that comprehensive measures be enacted
6 to ensure that gambling is free from criminal and corruptive elements, that
7 it is conducted honestly and competitively, and that it is conducted in
8 suitable locations.

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

14 (i) All gambling operations, all persons having a significant
15 involvement in gambling operations, all establishments where gambling is
16 conducted, and all manufacturers, sellers, and distributors of gambling
17 equipment must be licensed and regulated to protect the public health,
18 safety, and general welfare of the residents of this state as an exercise of the
19 police powers of the state.

20 * * *

21 (k) In order to effectuate state policy as declared herein, it is
22 necessary that gambling establishments, activities, and equipment be
23 licensed, that persons participating in those activities be licensed or
24 registered, that certain transactions, events, and processes involving
25 gambling establishments and owners of gambling establishments be subject
26 to prior approval or permission, that unsuitable persons not be permitted to
27 associate with gambling activities or gambling establishments, and that
28 gambling activities take place only in suitable locations. Any license or
permit issued, or other approval granted pursuant to this chapter, is
declared to be a revocable privilege, and no holder acquires any vested
right therein or thereunder.

23 2. Business and Professions Code, section 19805 provides, in part:

24 * * *

25 (j) “Finding of suitability” means a finding that a person meets
26 the qualification criteria described in subdivisions (a) and (b) of Section
27 19857, and that the person would not be disqualified from holding a state
28 gambling license on any of the grounds specified in Section 19859.

* * *

1 (m) "Gambling enterprise" means a natural person or an entity,
2 whether individual, corporate, or otherwise, that conducts a gambling
3 operation and that by virtue thereof is required to hold a state gambling
license under this chapter.

4 * * *

5 (p) "Gambling license" or "state gambling license" means any
6 license issued by the state that authorizes the person named therein to
conduct a gambling operation.

7 * * *

8 (ad) "Owner licensee" means an owner of a gambling enterprise
9 who holds a state gambling license.

10 * * *

11 (aj) "Renewal license" means the license issued to the holder of an
12 initial license that authorizes the license to continue beyond the expiration
date of the initial license.

13 3. Business and Professions Code section 19811, subdivision (b), provides:

14 Jurisdiction, including jurisdiction over operation and
15 concentration, and supervision over gambling establishments in this state
16 and over all persons or things having to do with the operation of
gambling establishments is vested in the commission.

17 4. Business and Professions Code section 19823 provides:

18 (a) The responsibilities of the commission include, without
19 limitation, all of the following:

20 (1) Assuring that licenses, approvals, and permits are
21 not issued to, or held by, unqualified or disqualified
22 persons, or by persons whose operations are conducted in a
manner that is inimical to the public health, safety, or
welfare.

23 (2) Assuring that there is no material involvement,
24 directly or indirectly, with a licensed gambling operation,
25 or the ownership or management thereof, by unqualified or
26 disqualified persons, or by persons whose operations are
conducted in a manner that is inimical to the public health,
27 safety, or welfare.

28 (b) For the purposes of this section, "unqualified person" means
a person who is found to be unqualified pursuant to the criteria set

1 forth in Section 19857, and “disqualified person” means a person who
2 is found to be disqualified pursuant to the criteria set forth in Section
3 19859.

4 5. Business and Professions Code section 19824 provides, in part:

5 The commission shall have all powers necessary and proper to
6 enable it fully and effectually to carry out the policies and purposes of
7 this chapter, including, without limitation, the power to do all of the
8 following:

9 * * *

10 (b) For any cause deemed reasonable by the commission, deny any
11 application for a license, permit, or approval provided for in this
12 chapter or regulations adopted pursuant to this chapter, limit, condition,
13 or restrict any license, permit, or approval, or impose any fine upon any
14 person licensed or approved. The commission may condition, restrict,
15 discipline, or take action against the license of an individual owner
16 endorsed on the license certificate of the gambling enterprise whether
17 or not the commission takes action against the license of the gambling
18 enterprise.

19 * * *

20 (d) Take actions deemed to be reasonable to ensure that no
21 ineligible, unqualified, disqualified, or unsuitable persons are
22 associated with controlled gambling activities.

23 6. Business and Professions Code, section 19825, provides:

24 The commission may require that any matter that the commission is
25 authorized or required to consider in a hearing or meeting of an
26 adjudicative nature regarding the denial, suspension, or revocation of a
27 license, permit, or finding of suitability, be heard and determined in
28 accordance with Chapter 5 (commencing with Section 11500) of Part
 1 of Division 3 or Title 2 of the Government Code.

 7. Business and Professions Code section 19850 provides:

 Every person who, either as owner, lessee, or employee, whether
 for hire or not, either solely or in conjunction with others, deals,
 operates, carries on, conducts, maintains, or exposes for play any
 controlled game in this state, or who receives, directly or indirectly,
 any compensation or reward, or any percentage or share of the money
 or property played, for keeping, running, or carrying on any controlled
 game in this state, shall apply for and obtain from the commission, and

1 shall thereafter maintain, a valid state gambling license, key employee
2 license, or work permit, as specified in this chapter. In any criminal
3 prosecution for violation of this section, the punishment shall be as
provided in Section 337j of the Penal Code.

4 8. Business and Professions Code section 19851 provides:

5 (a) The owner of a gambling enterprise shall apply for and obtain
6 a state gambling license. The owner of a gambling enterprise shall be
7 known as the owner-licensee.

8 (b) Other persons who also obtain a state gambling license, as
9 required by this chapter, shall not receive a separate license certificate,
10 but the license of every such person shall be endorsed on the license
certificate that is issued to the owner of the gambling enterprise.

11 9. Business and Professions Code section 19852 provides, in part:

12 Except as provided in Section 19852.2, an owner of a gambling
13 enterprise that is not a natural person shall not be eligible for a state
14 gambling license unless each of the following persons individually
applies for and obtains a state gambling license:

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

18 10. Business and Professions Code, section 19856 provides, in part:

19 (a) Any person who the commission determines is qualified to
20 receive a state license, having due consideration for the proper
21 protection of the health, safety, and general welfare of the residents of
22 the State of California and the declared policy of this state, may be
issued a license. The burden of proving his or her qualifications to
receive any license is on the applicant.

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

26 (c) In reviewing the application for any license, the commission
27 shall consider whether issuance of the license is inimical to public
28 health, safety, or welfare, and whether issuance of the license will
undermine public trust that the gambling operations with respect to

1 which the license would be issued are free from criminal and dishonest
2 elements and would be conducted honestly.

3 11. Business and Professions Code, section 19857 provides, in part:

4 No gambling license shall be issued unless, based on all the
5 information and documents submitted, the commission is satisfied that
6 the applicant is all of the following:

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

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

15 12. Business and Professions Code, section 19859 provides, in part:

16 The commission shall deny a license to any applicant who is
17 disqualified for any of the following reasons:

18 (a) Failure of the applicant to clearly establish eligibility and
19 qualification in accordance with this chapter.

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

25 13. Business and Professions Code, section 19866 provides:

26 An applicant for licensing or for any approval or consent required
27 by this chapter, shall make full and true disclosure of all information
28 to the department and the commission as necessary to carry out the
policies of this state relating to licensing, registration and control of
gambling.

14. Business and Professions Code section 19876, subdivision (a) provides:

Subject to the power of the commission to deny, revoke, suspend,
condition, or limit any license, as provided in this chapter, a license
shall be renewed biennially.

1 of California, and shall be liberally construed to effectuate those
2 purposes.

3 19. Government Code, section 11504, provides, in part:

4 A hearing to determine whether a right, authority, license, or
5 privilege should be granted, issued, or renewed shall be initiated by
6 filing a statement of issues. The statement of issues shall be a written
7 statement specifying the statutes and rules with which the respondent
8 must show compliance by producing proof at the hearing, and in
9 addition, any particular matters that have come to the initiating party
10 and would authorize a denial of the agency sought action. . . .

11 20. California Code of Regulations, title 4, section 12035, subdivision (a)(1) provides:

12 (a) The Commission shall issue an interim renewal license to an
13 applicant for renewal of a license when:

14 (1) The Commission has elected to hold an evidentiary hearing
15 pursuant to paragraph (2) of subdivision (a) of Section 12054.

16 21. California Code of Regulations, title 4, section 12054, subdivision (a)(2) provides, in part:

17 (a) At a non-evidentiary hearing meeting, the Commission may take, but
18 is not limited to taking, one of the following actions:

19 * * *

20 (2) Elect to hold an evidentiary hearing in accordance with
21 Section 12056 and, when for a renewal application, issue an interim
22 renewal license pursuant to Section 12035. The Commission shall
23 identify those issues for which it requires additional information or
24 consideration related to the applicant's suitability.

25 22. California Code of Regulations, title 4, section 12056, subdivision (a) provides, in part:

26 If the Commission elects to hold an evidentiary hearing, the hearing
27 will be conducted as a GCA hearing under Section 12060, unless the
28 Executive Director or the Commission determines the hearing should
be conducted as an APA hearing under Section 12058

23 23. California Code of Regulations, title 4, section 12058 provides:

24 (a) When the Commission elects to hold an APA hearing the
25 Commission shall determine whether the APA hearing will be held before

1 an Administrative Law Judge sitting on behalf of the Commission or before
2 the Commission itself with an Administrative Law Judge presiding in
3 accordance with Government Code section 11512. Notice of the APA
4 hearing shall be provided to the applicant pursuant to Government Code
5 section 11500 et seq.

6 (b) The burden of proof is on the applicant to prove his, her, or its
7 qualifications to receive any license or other approval under the Act.

8 (c) A Statement of Issues shall be prepared and filed according to
9 Government Code section 11504 by the complainant.

10 (d) At the conclusion of the evidentiary hearing, when the
11 Commission is hearing the matter, the members of the Commission shall
12 take the matter under submission, may discuss the matter in a closed session
13 meeting, may leave the administrative record open in order to receive
14 additional evidence as specified by the Commission, and may schedule
15 future closed session meetings for deliberation.

16 (e) The evidentiary hearing shall proceed as indicated in the notice,
17 unless and until the Executive Director or Commission approves
18 cancellation or a continuance.

19 24. California Code of Regulations, title 4, section 12346, subdivision (a)(1) provides:

20 (a) An application for a gambling license shall be denied by the
21 Commission if any of the following apply:

22 (1) The Commission finds that the applicant is ineligible,
23 unqualified, disqualified, or unsuitable pursuant to the
24 criteria set forth in the Act or other applicable law or that
25 granting the license would be inimical to public health,
26 safety, welfare, or would undermine the public trust that
27 gambling operations are free from criminal or dishonest
28 elements.

29 25. California Code of Regulations, title 4, section 12568, subdivision (c), provides, in part:

30 A state gambling license, finding of suitability, or approval
31 granted by the Commission . . . and an owner license for a gambling
32 establishment if the owner licensee has committed a separate violation
33 from any violations committed by the gambling establishment shall be
34 subject to revocation by the Commission on any of the following
35 grounds:

36 * * *

37 (3) If the Commission finds the holder no longer meets any
38 criterion for eligibility, qualification, suitability or continued

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operation, including those set forth in Business and Professions Code section 19857, 19858, or 19880, as applicable, or

(4) If the Commission finds the holder currently meets any of the criteria for mandatory denial of an application set forth in Business and Professions Code sections 19859 or 19860.