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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-HQ2022-00011SL

OAH No. 2023080078

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

FIRST STATEMENT OF ISSUES

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

21 **3950 North Cedar Avenue**
 22 **Fresno, CA 93726,**

Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Yolanda Morrow (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. 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 at 3950 North Cedar Avenue in
10 Fresno, California 93726.

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

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

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

23 **THE PENDING RENEWAL APPLICATIONS²**

24 6. The Bureau received an application for renewal of a state gambling license from
25 Respondent Corporation.

26 _____
27 ¹ Appendix A quotes the statutes and regulations applicable to this Statement of Issues in
pertinent part.

28 ² Under the Act, renewal applications are subject to the Commission’s power to deny,
revoke, suspend, condition, or limit any license. (Bus. & Prof. Code, § 19876, subd. (a).)

1 7. Respondent Kirkland submitted an application to renew his license.

2 8. Respondent Messina submitted an application to renew his license.

3 9. On or about April 30, 2020, the Bureau issued a Gambling Establishment and
4 Owner Application Review - Level III for Respondents’ applications to renew their licenses
5 (renewal applications). In that review, the Bureau identified as an area of concern ongoing
6 litigation with Club One’s prior owners.

7 10. On August 27, 2020, the Commission considered Respondents’ renewal
8 applications and referred the applications to a hearing to be held under the Administrative
9 Procedure Act (APA) (Gov. Code, § 11500, et seq.). (Bus. & Prof. Code, § 19825; Cal. Code.
10 Regs, tit. 4, §§ 12056, 12058.) The Commission stated two concerns: (1) the condition of Club
11 One’s then-finances; and (2) post-sale litigation.

12 **JURISDICTION, AND BURDEN OF PROOF**

13 11. The Commission has jurisdiction over the operation and concentration of gambling
14 establishments and all persons and things having to do with the operation of gambling
15 establishments. (Bus. & Prof. Code, § 19811, subd. (b).)

16 12. The Commission has all powers necessary and proper to enable it fully and
17 effectually to carry out the policies and purposes of the act including denying any application for
18 a license. (Bus. & Prof. Code, § 19824, subd. (b).) The Commission may require matters to be
19 heard and determined in an administrative proceeding under the APA. (Bus. & Prof. Code, §
20 19825.)

21 **LICENSURE CONSIDERATIONS AND POST-REFERRAL ACTIONS**
22 **(2015 FINANCIAL CONDITION OF CLUB ONE)**

23 13. The Bureau’s 2015 renewal report revealed net losses for the gambling enterprise
24 and negative retained earnings.

25 14. To address concerns about its financial condition, Club One filed for a lawful
26 Chapter 11 Reorganization on October 14, 2015. Under the Reorganization Plan, the overall debt
27 entering bankruptcy was to be reduced from \$39 million to \$10 million for Club One Casino, Inc.

28

1 15. On August 25, 2016, the Commission unanimously approved the above-described
2 Reorganization Plan with the condition, among others, that Club One Casino, Inc. "shall provide
3 written updates to the Bureau of Gambling [Control] every 90-days, with a copy to the
4 Commission, describing the progress in effectuating the Reorganization Plan, and shall provide
5 access to Bureau auditors as the Bureau may deem necessary to assure that the Reorganization
6 Plan is implemented as it has been described."

7 16. Thereafter, the Reorganization Plan was approved by the Bankruptcy Court and
8 that case was closed on December 16, 2016.

9 17. After the effectuation of the Reorganization Plan, the financial health of Club One
10 substantially improved and all subsequent Bureau audits have revealed no concerns regarding the
11 gambling enterprise's financial condition.

12 **LITIGATION WITH CLUB ONE'S PRIOR OWNERS**

13 18. The Bureau's 2015 renewal report deemed ongoing litigation with Club One's
14 prior owners an area of concern.

15 19. Ultimately, in the context of the 2016 Reorganization Plan, a global settlement of
16 Club One's outstanding litigation was reached, including the disputes with Club One's prior
17 owners. At the August 25, 2016 meeting when the Commission approved the Reorganization
18 Plan, counsel for the former owners confirmed on the record that both sellers were satisfied with
19 the global settlement.

20 20. Club One's license has had a condition requiring Respondents Kirkland and
21 Messina to submit a quarterly litigation summary to the Bureau since July 1, 2013. Respondents
22 have complied with this condition and the Bureau's review has revealed no concerns.

23 **BUREAU'S 2015 AND 2017 RECOMMENDATIONS**

24 21. Although the Bureau deemed the litigation with Club One's prior owners as an
25 area of concern in its 2015 renewal report for Club One, it stated that it did not believe the
26 litigation to be sufficient to support a recommendation of denial of Club One's renewal
27 applications or Respondents Kirkland and Messina's 2015 initial applications for Tres Lounge
28 and Casino that were approved by the Commission on July 30, 2015.

1 22. On July 14, 2017, the Bureau sent a letter to the Commission requesting that it
2 reconsider its June 25, 2015, decision to send Club One Casino’s renewal applications to an APA
3 hearing based on its determination that the issues that resulted in the referral had been largely
4 resolved through the effectuation of the Reorganization Plan and global settlement.

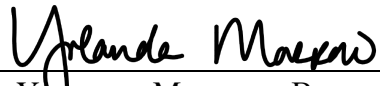
5 23. Respondents Club One, Kyle Kirkland, and Dana Messina have been issued
6 interim renewal licenses every two years since the Commission’s 2015 referral following
7 investigations by the Bureau, which have revealed no concerns regarding the operation of the
8 gambling establishment. There is no evidence to suggest that the issues that resulted in the 2015
9 referral have recurred in the subsequent nine years.

10 **CONCLUSION**

11 Wherefore, Complainant, based on the foregoing, recommends that the Commission issue
12 a decision:

- 13 1. Approving the application of Respondent KMGI, Inc. to renew its state gambling
14 license number GEGE-001121;
15 2. Approving the application of Respondent Kyle Kirkland to renew his state
16 gambling license number GEOW-003177; and
17 3. Approving the application of Respondent Dana Messina to renew his state
18 gambling license number GEOW-003176.

19
20 Dated: September 19, 2024



YOLANDA MORROW, 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 the
26 qualification criteria described in subdivisions (a) and (b) of Section 19857,
27 and that the person would not be disqualified from holding a state gambling
28 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,
safety, or welfare.

27 (b) For the purposes of this section, “unqualified person” means
28 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
29 1 of Division 3 or Title 2 of the Government Code.

30 7. Business and Professions Code section 19850 provides:

31 Every person who, either as owner, lessee, or employee, whether
32 for hire or not, either solely or in conjunction with others, deals,
33 operates, carries on, conducts, maintains, or exposes for play any
34 controlled game in this state, or who receives, directly or indirectly,
35 any compensation or reward, or any percentage or share of the money
36 or property played, for keeping, running, or carrying on any controlled
37 game in this state, shall apply for and obtain from the commission, and
38 shall thereafter maintain, a valid state gambling license, key employee
39 license, or work permit, as specified in this chapter. In any criminal
40 prosecution for violation of this section, the punishment shall be as
41 provided in Section 337j of the Penal Code.

1 8. Business and Professions Code section 19851 provides:

2 (a) The owner of a gambling enterprise shall apply for and obtain
3 a state gambling license. The owner of a gambling enterprise shall be
4 known as the owner-licensee.

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

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

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

14 (a) If the owner is a corporation, then each officer, director, and
15 shareholder, other than a holding or intermediary company, of the
16 owner. The foregoing does not apply to an owner that is either a
17 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
23 issued a license. The burden of proving his or her qualifications to
24 receive any license is on the applicant.

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

(c) In reviewing the application for any license, the commission
shall consider whether issuance of the license is inimical to public
health, safety, or welfare, and whether issuance of the license will
undermine public trust that the gambling operations with respect to
which the license would be issued are free from criminal and dishonest
elements and would be conducted honestly.

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

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

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(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.

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

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

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

(b) 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.

13. 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.

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.

15. Business and Professions Code section 19920 provides:

It is the policy of the State of California to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the state. The responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the commission or by local government shall constitute grounds for license revocation or other disciplinary action.

1 16. Business and Professions Code section 19922 provides:

2 No owner licensee shall operate a gambling enterprise in violation of
3 any provision of this chapter or any regulation adopted pursuant to this
chapter.

4 17. Business and Professions Code section 19930, subdivisions (b), (d) and (f),
5 provide in pertinent part:

6 (b) If, after any investigation, the department is satisfied that a
7 license, permit, finding of suitability, or approval should be suspended
8 or revoked, it shall file an accusation with the commission in
accordance with Chapter 5 (commencing with Section 11500) of Part 1
of Division 3 of Title 2 of the Government Code.

9 * * *

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

14 * * *

15 (f) For purposes of this section, “costs” include costs incurred for
any of the following:

16 (1) The investigation of the case by the department.

17 (2) The preparation and prosecution of the case by the
18 Office of the Attorney General.

19 18. Business and Professions Code section 19971 provides:

20 This act is an exercise of the police powers of the state for the
21 protection of the health, safety, and welfare of the people of the State
22 of California, and shall be liberally construed to effectuate those
purposes.

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

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

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

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

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

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

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

9 * * *

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

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

16 If the Commission elects to hold an evidentiary hearing, the hearing
17 will be conducted as a GCA hearing under Section 12060, unless the
18 Executive Director or the Commission determines the hearing should
19 be conducted as an APA hearing under Section 12058

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

21 (a) When the Commission elects to hold an APA hearing the
22 Commission shall determine whether the APA hearing will be held before
23 an Administrative Law Judge sitting on behalf of the Commission or before
24 the Commission itself with an Administrative Law Judge presiding in
25 accordance with Government Code section 11512. Notice of the APA
26 hearing shall be provided to the applicant pursuant to Government Code
27 section 11500 et seq.

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

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

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

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

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

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

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

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

11 A state gambling license, finding of suitability, or approval
12 granted by the Commission . . . and an owner license for a gambling
13 establishment if the owner licensee has committed a separate violation
14 from any violations committed by the gambling establishment shall be
subject to revocation by the Commission on any of the following
grounds:

15 * * *

16 (3) If the Commission finds the holder no longer meets any
17 criterion for eligibility, qualification, suitability or continued
18 operation, including those set forth in Business and
Professions Code section 19857, 19858, or 19880, as
applicable, or

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