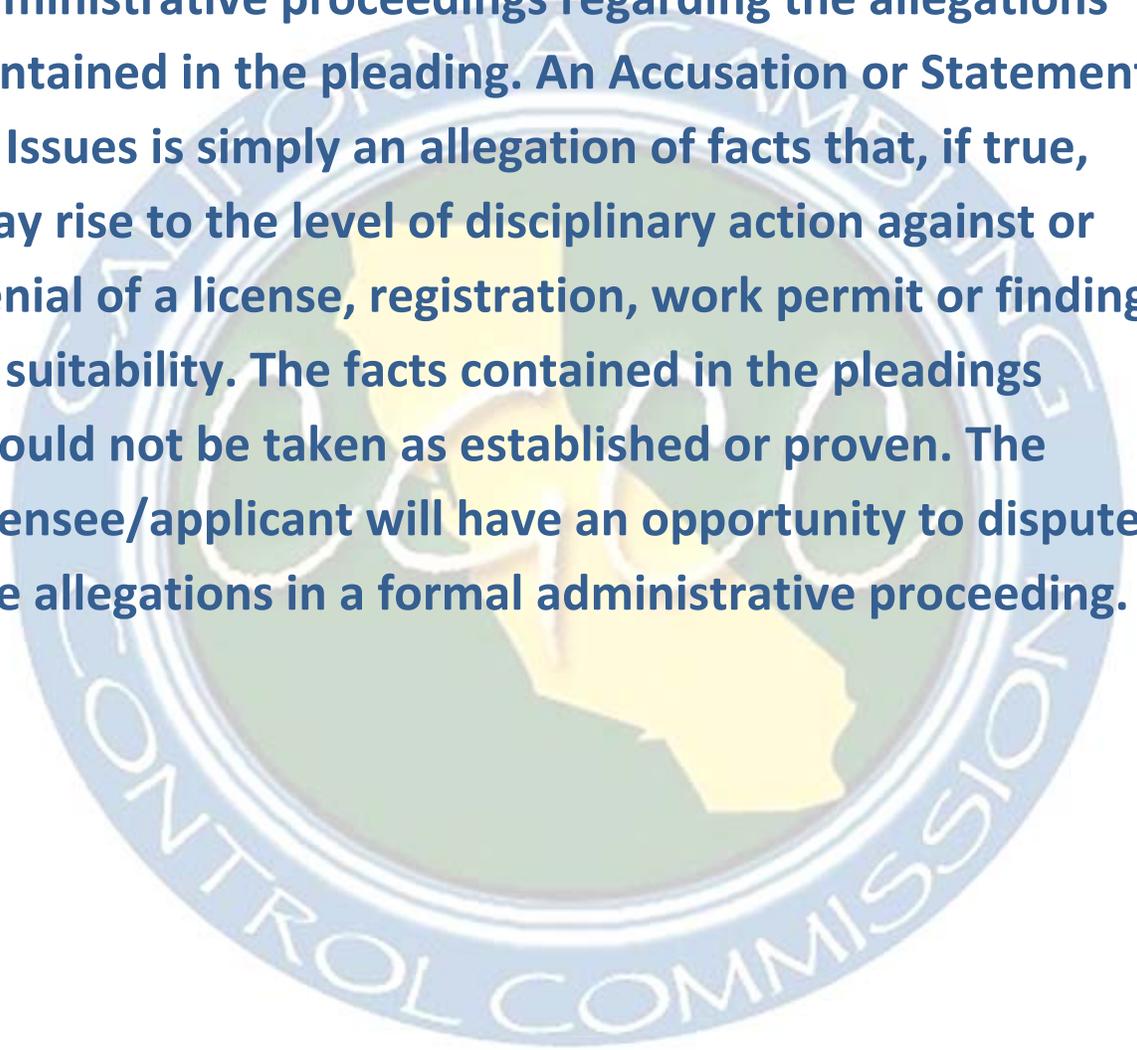


The Commission is providing a copy of this disciplinary pleading (Accusation, or Statement of Reasons, Statement of Particulars, or Statement of Issues) so the public is as informed as possible of pending administrative proceedings regarding the allegations contained in the pleading. An Accusation or Statement of Issues is simply an allegation of facts that, if true, may rise to the level of disciplinary action against or denial of a license, registration, work permit or finding of suitability. The facts contained in the pleadings should not be taken as established or proven. The licensee/applicant will have an opportunity to dispute the allegations in a formal administrative proceeding.





1 XAVIER BECERRA
 Attorney General of California
 2 SARA J. DRAKE
 Senior Assistant Attorney General
 3 T. MICHELLE LAIRD
 Supervising Deputy Attorney General
 4 TIMOTHY M. MUSCAT
 Deputy Attorney General
 5 WILLIAM P. TORNGREN
 Deputy Attorney General, SBN 58493
 6 1300 I Street, Suite 125
 P.O. Box 944255
 7 Sacramento, CA 94244-2550
 Telephone: (916) 210-7782
 8 Fax: (916) 327-2319
 E-mail: William.Torngren@doj.ca.gov
 9 *Attorneys for Complainant*

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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

**In the Matter of the Statement of Issues Regarding the
 Conversion Applications of:**

FORTUNE PLAYERS GROUP, INC., Registration No.
 TPPP-000090,

TRICIA PALMIANO CASTELLANOS, Registration
 No. TPOW-000380,

REMIL REYES MEDINA, Registration No. TPOW-
 000381, and

PHYLLIS REYES CUISON, Registration No. TPOW-
 000492

333 Gellert Boulevard, No. 226
 Daly City, California 94015

Respondents.

BGC No. BGC-HQ2019-005SL

OAH No:

STATEMENT OF ISSUES

1 Complainant alleges as follows:

2 **PARTIES**

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

5 2. Respondent Fortune Players Group, Inc. (FPG), Registration No. TPPP-000090,
6 is registered as a third-party provider of proposition player services (third-party provider)
7 pursuant to the California Gambling Control Commission’s regulations (Cal. Code Regs., tit. 4, §
8 12200 et seq.). FPG’s shareholders and officers are respondents Tricia Palmiano Castellanos
9 (Ms. Castellanos) (Registration No. TPOW-000380), Remil Reyes Medina (Remil Medina)
10 (Registration No. TPOW-000381), and Phyllis Reyes Cuison (Ms. Cuison) (Registration No.
11 TPOW-000492). Collectively, FPG, Ms. Castellanos, Remil Medina, and Ms. Cuison are
12 referred to in this statement of issues as “Respondents.”

13 **JURISDICTION**

14 3. The Gambling Control Act (Act) (Bus. & Prof. Code, § 19800 et seq.)¹ gives the
15 Commission jurisdiction over the operation and concentration of gambling establishments and all
16 persons and things having to do with operation of gambling establishments. (Bus. & Prof. Code,
17 § 19811, subd. (b).) The Commission has all powers necessary and proper to fully and
18 effectually carry out the policies and purposes of the Act including, without limitation, the power
19 to deny for any cause it deems reasonable any application for license or approval. (Bus. & Prof.
20 Code, § 19824, subd. (b).)

21 **THIS PROCEEDING**

22 4. Respondents applied to convert their registrations to licenses issued by the
23 Commission pursuant to its regulations. (Cal. Code Regs., tit. 4, § 12218.)
24
25

26 _____
27 ¹ The statutes and regulations from the Act and the regulations adopted thereunder,
28 specifically applicable to this statement of issues, are quoted in pertinent part in Appendix A.

1 misleading information pertaining to the qualification for licensure likewise renders an applicant
2 disqualified for licensure. (Bus. & Prof. Code, § 19859, subd. (b).) These failures also make an
3 applicant unqualified for licensure. (Bus. & Prof. Code, § 19857.)

4 9. California proscribes, among other things, banked games. (Pen. Code, § 330.) As
5 a consequence of this proscription, the card room industry has developed certain games, known
6 as “California Games,” that feature a player-dealer position that must be systematically and
7 continuously rotated amongst the participants and must preclude maintenance, or operation, of a
8 bank. (Pen. Code, § 330.11.) Third-party providers provide services under contracts with card
9 rooms with respect to California Games. (Bus. & Prof. Code, § 19984.) Each contract must be
10 approved in advance by the Bureau. (Bus. & Prof. Code, § 19984, subd. (a); Cal. Code Regs., tit.
11 4, § 12200.9, subd. (a)(1).) The Commission has established criteria for, and requires licensure
12 and registration of, third-party providers and their owners, managers, players, and certain other
13 persons. (Cal. Code Regs., tit. 4, § 12200 et seq.)

14 10. In this proceeding, Complainant requests denial of Respondents’ applications to
15 convert their third-party provider registrations to licenses because Respondents, and each of
16 them, is unqualified for, and disqualified from, licensing under the Act and the regulations
17 adopted by the Commission. As provided by the Act, Complainant also seeks the costs of
18 investigating and prosecuting this matter.

19 **BURDEN OF PROOF**

20 11. Each Respondent has the burden to prove that he, she, or it is qualified to be
21 issued a license. (Bus. & Prof. Code, § 19856, subd. (a); see also Gov. Code, § 11504.)

22 **FPG HISTORY AND BUSINESS INTERCONNECTIONS**

23 12. FPG was incorporated on February 3, 2010. Its first shareholders were Remil
24 Medina and Ms. Castellanos, each of whom paid \$90 per share in July 2010. Approximately 60
25 days after her initial investment, Ms. Castellanos sold one-half of her shares to her sister at \$90
26 per share. Approximately 17 months later, Ms. Castellanos purchased those shares back from
27 her sister, paying \$146.67 per share. Approximately 11 months later, Ms. Castellano sold shares
28 to Ms. Cuison at \$112 per share.

1 13. FPG began providing third-party provider services to Lucky Chances Casino
2 (Casino), a 60-table card room located in Colma, California, in July 2010. The Casino's
3 corporate owner's only shareholders are Rommel Medina and Ruell Medina, who are Remil
4 Medina's brothers and cousins to Ms. Castellanos and Ms. Cuison. FPG does not provide third-
5 party services to any other card room. The Bureau approved FPG's contract, and contract
6 renewals, to provide third-party provider services to the Casino. FPG pays more than \$350,000
7 per month to the Casino under the current Bureau-approved contract.

8 14. Respondents have interests in, or have engaged in transactions with, several inter-
9 connected business entities and have engaged in transactions with each other. These interests
10 and transactions include, among others, the following:

11 a. FPG paid more than \$500,000 to a company owned jointly by Remil
12 Medina and his brothers in 2016 and 2017. That company also provides services to the
13 Casino. As set forth above, Remil Medina's brothers own all shares of stock issued by
14 the Casino's corporate owner.

15 b. FPG maintains a bank account at a national bank in which the Casino
16 corporate owner's shareholders – Remil Medina's brothers – have a majority interest.

17 c. Ms. Castellanos owns a shareholder interest in a Philippine company that
18 is a money remittance delivery agent of funds from the United States, Canada, and other
19 countries to Manila, Philippines. Ms. Cuison is that company's chief financial officer.
20 That company is also the payment agent for, and delivers funds received from, a money
21 remittance corporation owned by Remil Medina and his brothers.

22 d. Ms. Castellanos and Remil Medina each own 50 percent of a newspaper in
23 San Francisco.

24 e. A loan from Ms. Cuison financed Remil Medina's investment in FPG.

25 f. As stated above, Remil Medina owns shares of stock in a money
26 remittance corporation along with his brothers. Ms. Cuison is the chief financial officer
27 of that money remittance corporation. Remil Medina's father loaned him and his
28

1 brothers monies for the purchase. Remil Medina's brothers have advanced monies on his
2 behalf to make payments on the loan.

3 g. Ms. Cuison is the chief financial officer of a corporation providing
4 advertising services to the Casino. That corporation is owned by Remil Medina's
5 brothers.

6 h. Ms. Cuison is the chief financial officer or a director for four other
7 businesses owned by Remil Medina's brothers.

8 i. In addition to and while performing duties for FPG, its office manager
9 provided services to, performed duties for, and worked for other businesses owned Remil
10 Medina and/or his brothers.

11 **FIRST CAUSE FOR DENIAL**

12 **(All Respondents – Involvement by an Unlicensed, Disqualified Person)**

13 15. Respondents are ineligible and unqualified for licensing because they allowed an
14 unlicensed, disqualified person to be involved in their management and operations. The
15 unlicensed, disqualified person was Rene Medina, who is Remil Medina's father and the uncle of
16 Ms. Castellanos and Ms. Cuison. Rene Medina is disqualified from licensure under the Act
17 because in 2008, he was convicted of three federal felony tax evasion counts based, in part, on
18 falsifying records relating to the Casino's business and operations. Rene Medina's involvement
19 in FPG was shown by, among other things, the following:

20 a. On October 15, 2015, the Bureau conducted an unannounced site visit at
21 FPG's business offices. During the site visit, the Bureau found multiple entries in day
22 planners used by FPG's office manager and in text messages on her cell phone that
23 showed that Rene Medina was involved in FPG's day-to-day operations. In addition to
24 these documents, during a recorded interview conducted by the Bureau's agents, FPG's
25 office manager confirmed, among other things, that Rene Medina was involved in FPG's
26 hiring decisions, approved salary increases and adjustments for FPG's employees,
27 authorized how things should be done at FPG, and gave final approval to FPG's actions.
28

1 FPG's office manager stated that she sent materials to Rene Medina because she was told
2 to do so by FPG's owners.

3 b. In *Department of Fair Employment and Housing v. Fortune Players*
4 *Group, Inc.*, (DEFH Litigation), judgment was entered against FPG for \$34,477 plus
5 attorney fees in the amount of \$341,040 and costs in the amount of \$56,656.90. The
6 judgment was affirmed on appeal. The DEFH Litigation found, among other things, that
7 Rene Medina was involved in the operation, management, and control of FPG. Because
8 he was an authorized agent, his statements were admissible against, and binding on, FPG.
9 The Court of Appeals' unpublished opinion affirming judgment against FPG is Exhibit 1
10 to this statement of issues.

11 c. During an administrative proceeding involving the Casino, its corporate
12 owner, and shareholders, Remil Medina's brother agreed that Ms. Cuison has "been a
13 trusted business partner, basically, of your dad [Rene Medina] for many, many years."
14 Ms. Cuison has made loans to Rene Medina that he repaid.

15 (Bus. & Prof. Code, §§ 19823, 19856, 19857, 19859, subds. (a), (b), (c)(1); Cal. Code Regs., tit.
16 4, § 12218.11, subds. (e) & (f).)

17 **SECOND CAUSE FOR DENIAL**

18 **(All Respondents – Failure To Make Full and True Disclosure)**

19 16. Respondents are ineligible for, unqualified for, and disqualified from licensing
20 because they failed to make full and true disclosure of Rene Medina's involvement in FPG's
21 management, operations, and control as follows:

22 a. Prior to the Bureau's October 15, 2015 unannounced site visit, none of the
23 Respondents reported, or otherwise disclosed, Rene Medina's involvement in FPG's
24 management and operations.

25 b. At the Commission's November 1, 2018 meeting when responding to
26 questions from the Commissioners, Respondents' designated agent stated that Rene
27 Medina was not the decider, or a person accused of discrimination, with respect to the
28 actions upon which the DEFH Litigation was based. This was untrue or misleading, and

1 Rene Medina's involvement in FPG's management and operations was a material fact
2 pertaining to qualification.

3 (Bus. & Prof. Code, §§ 19856, 19857, 19859, subd. (b), 19866; Cal. Code Regs., tit. 4, §
4 12218.11, subds. (e) & (f).)

5 **THIRD CAUSE FOR DENIAL**

6 **(All Respondents – Failure To Comply with Regulations)**

7 17. Respondents are ineligible and unqualified for licensing because they failed to
8 comply with regulations adopted by the Commission. The failure to comply includes, among
9 other things, the following:

10 a. Respondents failed to have FPG's office manager apply for and obtain
11 registration. The office manager's duties included regularly entering the Casino to
12 collect administrative documents. She regularly entered the Casino, but had not been
13 issued a badge by the Commission.

14 b. FPG made payments to the Casino that were not included in the Bureau-
15 approved contract. Specifically, FPG paid monies in December 2010 to the Casino
16 without applying for or obtaining prior Bureau approval. FPG and the Casino agreed to
17 delay substantial monthly payments that were included in the Bureau-approved contract.
18 FPG did not apply for or obtain prior Bureau approval delaying more than \$300,000 in
19 monthly payments.

20 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19984; Cal. Code Regs., tit. 4, §§
21 12200.3, subd. (a), 12200.7, subds. (b)(8), (b)(14), (b)(21), 12218.11, subds. (e) & (i).)

22 **FOURTH CAUSE FOR DENIAL**

23 **(All Respondents – Threat to Effective Regulation and Control of Controlled Gambling)**

24 18. Respondents are ineligible and unqualified for licensing because their prior
25 activities and associations pose a threat to the effective regulation and control of controlled
26 gambling and enhance the dangers of unsuitable or illegal practices and activities in carrying on
27 business and financial arrangements incidental to controlled gambling. Those activities and
28 associations include, among other things, inter-connected financial arrangements and dealings,

1 associations with Rene Medina and allowing his involvement in FPG's operation, and
2 associations and dealings with businesses owned by the Casino's shareholders.

3 (Bus. & Prof. Code, §§ 19823, 19856, 19857; Cal. Code Regs., tit. 4, § 12218.11, subd. (e).)

4 **FIFTH CAUSE FOR DENIAL**

5 **(Ms. Castellanos – Failure To Comply with Regulations)**

6 19. Ms. Castellanos is ineligible and unqualified for licensing for failing to comply
7 with regulations adopted by the Commission. Her failure to comply includes, among other
8 things, the following:

9 a. On October 29, 2008, Ms. Castellanos became a shareholder of Wager
10 Master, Inc. (WMI), which provided third-party provider services to the Casino at the
11 time. Ms. Castellanos, however, did not become registered as an owner as required by
12 the Commission's regulations until November 9, 2009 – more than one year after
13 acquiring her shareholder interest. Instead, approximately five months after acquiring her
14 ownership interest, Ms. Castellanos applied for registration as a player – the lowest level
15 of registration for a person affiliated with a third-party provider. Approximately four
16 months later, Ms. Castellanos submitted an owner application. In February 2010, Ms.
17 Castellanos became the sole shareholder of WMI.

18 b. Between May 2010 and July 2010, WMI provided third-party provider
19 services to the Casino without a Bureau-approved contract. In October 2010, Ms.
20 Castellanos filed a certificate of dissolution for WMI.

21 (Bus. & Prof. Code, §§ 19856, 19857, 19984; Cal. Code Regs., tit. 4, §§ 12200.7, subd. (b)(8),
22 12200.9, subd. (a)(1), 12201, subd. (d), 12218.11, subds. (e) & (i).)

23 **SIXTH CAUSE FOR DENIAL**

24 **(Remil Medina – Conviction of Crime Involving Moral Turpitude)**

25 20. On October 28, 2002, Remil Medina was convicted of a misdemeanor offense
26 considered to be a crime of moral turpitude. (Pen. Code, § 646.9, subd. (a) [stalking].) The
27 conviction eventually was dismissed pursuant to Penal Code section 1203.4. The underlying
28

1 facts of the conviction and Remil Medina's statements to the Bureau regarding those facts
2 demonstrate that he is ineligible and unqualified for licensing.
3 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b); Cal. Code Regs., tit. 4, § 12218.11, subd.
4 (e).)

5 **SEVENTH CAUSE FOR DENIAL**

6 **(Ms. Cuison – Failure To Make Full and True Disclosure)**

7 21. Ms. Cuison is ineligible for, unqualified for, and disqualified from licensing
8 because she failed to make full and true disclosure of the following, among other things:

9 a. On March 8, 2006, the United States indicted Ms. Cuison, along with
10 others including Rene Medina, for conspiracy, tax evasion, making and subscribing false
11 tax returns, and aiding and assisting in the preparation of false tax returns. On May 17,
12 2006, the United States filed a superseding indictment removing the charge of aiding and
13 assisting in the preparation of false tax returns. The United States dismissed all charges
14 against Ms. Cuison on October 30, 2008. Ms. Cuison failed to disclose the indictment to
15 the Bureau in her application and supplemental information submission.

16 b. Before purchasing shares in FPG, Ms. Cuison was a consultant for FPG.
17 Earlier, she was consultant for WMI. Ms. Cuison was not registered as a third-party
18 provider other employee. Ms. Cuison did not disclose these consultancies in her
19 application or supplemental information submission.

20 c. In connection with her application, Ms. Cuison failed to disclose familial
21 relationships, including those with Remil Medina and his brothers, in her application or
22 supplemental information submission.

23 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19859, subd. (b), 19866; Cal. Code
24 Regs., tit. 4, §§ 12218.11, subds. (e) & (f).)

25 **COST RECOVERY**

26 22. In the event the administrative law judge recommends that Respondent's and its
27 owners' applications for licensure be denied, Respondent and its owners may, upon the
28 presentation of suitable proof by the Bureau, be ordered to pay the Bureau the reasonable costs

1 of prosecution and enforcement of the case. Costs include both the investigation by the Bureau,
2 and the preparation and prosecution of the case by the Office of the Attorney General. (Bus. &
3 Prof. Code, § 19930, subds. (d) & (f).)

4 **PRAYER**

5 WHEREFORE, Complainant requests that following the hearing to be held on the
6 matters herein alleged a decision be issued:

7 1. Denying the application for conversion from registration to licensing of
8 respondent Fortune Players Group, Inc., Registration No. TPPP-000090;

9 2. Denying the application for conversion from registration to licensing of
10 respondent Tricia Palmiano Castellanos, Registration No. TPOW-000380;

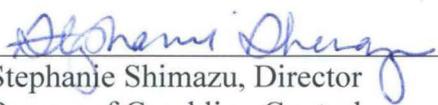
11 3. Denying the application for conversion from registration to licensing of
12 respondent Remil Reyes Medina, Registration No. TPOW-000381;

13 4. Denying the application for conversion from registration to licensing of
14 respondent Phyllis Reyes Cuison, Registration No. TPOW-000492;

15 5. Requiring Respondents, jointly and severally, to reimburse the Bureau the
16 reasonable costs of investigating and prosecuting this case, pursuant to Business and Professions
17 Code, section 19930, subdivision (d); and

18 6. Taking such other and further action as the Commission may deem appropriate.
19

20 Dated: January 2, 2020


Stephanie Shimazu, Director
Bureau of Gambling Control
California Department of Justice
Complainant

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3. Business and Professions Code, section 19823, provides:

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

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

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

(b) For the purposes of this section, "unqualified person" means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and "disqualified person" means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

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

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

* * *

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

* * *

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

5. Business and Professions Code, section 19825, provides:

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

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

- (a) . . . The burden of proving his or her qualifications to receive any license is on the applicant.
- (b) An application to receive a license constitutes a request for a determination of the applicant’s general character, integrity, and ability to participate in, engage in, or be associated with controlled gambling.
- (c) In reviewing an 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.

7. Business and Professions Code section 19857, subdivisions (a) and (b), provide:

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:

- (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.

8. Business and Professions Code, section 19859, subdivisions (a), (b), and (c)(1), provide:

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.
- (c)(1) [C]onviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.

1 (b) The commission shall establish reasonable criteria for, and
2 require the licensure and registration of, any person or entity that provides
3 proposition player services at gambling establishments pursuant to this
4 section, including owners, supervisors, and players. Those employed by a
5 third-party provider of proposition player services, including owners,
6 supervisors, observers, and players, shall wear a badge that clearly identifies
7 them as proposition players whenever they are present within a gambling
8 establishment. The commission may impose licensing requirements,
9 disclosures, approvals, conditions, or limitations as it deems necessary to
10 protect the integrity of controlled gambling in this state

11
12 13. California Code of Regulations, title 4, section 12058, provides:

13 (a) When the Commission elects to hold an APA hearing the
14 Commission shall determine whether the APA hearing will be held before
15 an Administrative Law Judge sitting on behalf of the Commission or before
16 the Commission itself with an Administrative Law Judge presiding in
17 accordance with Government Code section 11512. Notice of the APA
18 hearing shall be provided to the applicant pursuant to Government Code
19 section 11500 et seq.

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

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

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

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

14. California Code of Regulations, title 4, section 12200.3, subdivision (a) provides:

(a) All individuals licensed or registered as primary owners, owners,
supervisors, players, or other employees of the primary owner shall wear in
a prominently visible location a numbered badge issued by the Commission
when present in a gambling establishment during the provision of
proposition player services under the proposition player contract that covers
the licensee or registrant.

1 15. California Code of Regulations, title 4, section 12200.7 provides in relevant part:

2 (b) Each proposition player contract must specifically require all of
3 the following to be separately set forth at the beginning of the contract in the
4 following order:

5 ***

6 (8) That proposition player services shall be provided in the
7 gambling establishment only in compliance with laws and regulations
8 pertaining to controlled gambling.

9 ***

10 (14) A full disclosure of any financial arrangements entered
11 into during the term of the contract for any purpose between the house
12 and any registrant or licensee covered by the proposition player
13 contract. If there is no financial consideration that passes under the
14 contract, a statement to that effect shall be included.

15 ***

16 (21) That the contract is a complete expression of all
17 agreements and financial arrangements between the parties; that any
18 addition to or modification of the contract, including any
19 supplementary written or oral agreements, must be approved in
20 advance by the Bureau . . . before the addition or modification takes
21 effect.

22 16. California Code of Regulations, title 4, section 12200.9, subdivision (a)(1), provides
23 in relevant part:

24 (a)(1) Proposition player services must not be provided except
25 pursuant to a written proposition player contract approved in advance by the
26 Bureau. Provision of proposition player services by any person subject to
27 registration or licensing under this chapter, or engagement of proposition
28 player services by the holder of a state gambling license, without a contract
as required by this section is a violation of this section. . . .

17. California Code of Regulations, title 4, section 12201, subdivision (d),
provides:

(d) If a primary owner is a corporation, partnership, or other
business entity, each owner, and individual having a relationship to that
entity specified in Business and Professions Code section 19852,
subdivisions (a) through (i), inclusive, must individually apply for and
obtain registration as an owner listed on the business entity's registration
certificate. No business entity or sole proprietor can be registered under this
chapter that is also licensed under the Act to operate a gambling
establishment.

1 18. California Code of Regulations, title 4, section 12218.11 provides in
2 relevant part:

3 A requester shall be ineligible for licensing for any of the following
4 causes:

5 ***

6 (e) The requester has failed to meet the requirements of Business
7 and Professions Code sections 19856 or 19857.

8 (f) The requester would be ineligible for a state gambling license
9 under any of the criteria set forth in Business and Professions Code section
10 19859, subdivisions (b), (e), or (f).

11 ***

12 (i) The requester has failed to comply with one or more of the
13 requirements set forth in paragraphs (8), (9), (15), (16), (17), (18) or (21) of
14 subsection (b) of Section 12200.7 or in paragraph (2) of subsection (c) of
15 Section 12200.7.

16 19. Penal Code section 330 provides in relevant part:

17 Every person who deals, plays, or carries on, opens, or causes to be
18 opened, or who conducts, either as owner or employee, whether for hire or
19 not, . . . any banking or percentage game played with cards, dice, or any
20 device, for money, checks, credit, or any other representative of value, and
21 every person who plays or bets at or against any of those prohibited games,
22 is guilty of a misdemeanor

23 20. Penal Code section 330.11 provides in relevant part:

24 “Banking game” or “banked game” does not include a controlled game
25 if the published rules of the game feature a player-dealer position and
26 provide that this position must be continuously and systematically rotated
27 amongst each of the participants during the play of the game, ensure that the
28 player-dealer is able to win or lose only a fixed or limited wager during the
play of the game, and preclude the house, another entity, a player, or an
observer from maintaining or operating as a bank during the course of the
game. . . .

EXHIBIT 1

***Department of Fair Employment and Housing v.
Fortune Players Group, Inc.
(Oct. 25, 2017, A148624)***

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Plaintiff and Respondent,

v.

FORTUNE PLAYERS GROUP, INC.,

Defendant and Appellant,

MARIA ESCUETA,

Real Party In Interest.

A148624

(San Mateo County
Super. Ct. No. CIV-529332)

The Department of Fair Employment and Housing (DFEH) brought an employment discrimination suit, on behalf of itself and Maria Escueta, against Escueta's employer, Fortune Players Group, Inc. (FPG). (Gov. Code, § 12965.) The jury found FPG discriminated against Escueta on the basis of her gender, race and national origin, in violation of the California Fair Employment and Housing Act (*id.*, § 12900 et seq.). Escueta was awarded economic and noneconomic damages. FPG appeals from the judgment, arguing the trial court abused its discretion in a pretrial evidentiary ruling and in denying FPG's motion for new trial. FPG also maintains substantial evidence does not support the jury's economic damages award. We disagree and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

FPG is a third-party company that staffs Lucky Chances Casino (Lucky Chances) in Colma with proposition players. Proposition players serve as “bankers” for gaming tables and play the games using chips provided by their employer. Unlike Las Vegas casinos where patrons play against the house, California cardrooms are required to contract with a third-party company, such as FPG, to serve as the “bank” and to pay out when patrons win. The third party’s proposition players also play against the patrons in the cardroom. FPG is owned by Tricia Castellanos, Remil Medina, and Phyllis Cuison.

FPG employs four levels of proposition players. Level Four players are considered entry level and play blackjack and three-card poker. Level Three players play Ultimate Texas Hold‘em and the Level Four games. Proposition players in Level Two positions play doublehand, as well as Level Three and Four games. Level One is the highest level. Level One players play pai gow tiles, as well as Level Two, Three, and Four games.

In July 2010, FPG hired Escueta, a Filipino woman, to work as a Level Four proposition player. She was paid \$12 per hour. Escueta communicated her interest in and qualifications for a Level Two position on numerous occasions throughout her employment. In 2010, Escueta told FPG’s operations manager, Danny Wong, she was interested in playing doublehand—a Level Two position. Wong told her there were no openings. Shortly thereafter, on September 15, 2010, a Chinese male was hired for a Level Two position.

In 2011, Escueta was promoted to a Level Three position and received a \$2.00 increase in her hourly wage. Also in 2011, without Escueta being given any opportunity to apply, two more Chinese males, a Chinese female, and a Filipino male were hired or promoted to Level Two positions. In 2012, Escueta spoke to FPG’s office manager,

¹ Because FPG does not challenge the sufficiency of the evidence to support the jury’s finding of discrimination, we limit our statement of the facts to those material to its arguments on appeal and resolve conflicts in favor of DFEH.

Angie De Los Reyes, about openings and was told there was a hiring freeze for positions at Levels One and Two. Soon after this conversation, and without affording Escueta the chance to apply, a Chinese male was promoted to a Level Two position.

Around April 2013, Escueta again requested a promotion to Level Two. In May 2013, after a Level Two player was promoted to a Level One position, a Chinese male was promoted to the vacant Level Two position. Again, no one notified Escueta of the opening or allowed her to apply. In August 2013, Escueta addressed a letter to De Los Reyes and Wong, in which she again sought (unsuccessfully) to audition for a Level Two position.

In July 2014, DFEH sued FPG, on behalf of itself and Escueta, for employment discrimination on the basis of sex, race, and national origin (Gov. Code, § 12940, subd. (a)) and for failure to prevent discrimination (*id.*, § 12940, subd. (k)). DFEH filed a first amended complaint on July 30, 2014, which alleged the same causes of action. At the time the amended complaint was filed and through trial, Escueta continued to work for FPG as a Level Three proposition player. The amended complaint alleged FPG discriminated against Escueta because of her gender (female), race and national origin (Filipino) when, despite communicating her qualifications and interest in a Level Two position, FPG failed to promote her. DFEH alleged that FPG preferred to hire or promote Chinese and/or male individuals to play its higher-level games (Levels One and Two).

During discovery, Daniel Chan, a former FPG employee and Escueta's husband, was deposed. Chan testified René Medina, the former owner of Lucky Chances,² said, "he doesn't trust non-Chinese people at [pai gow] tiles," a Level One game. Thereafter, René's role at FPG and his discriminatory statements were the subject of ongoing discovery and motion practice. FPG insisted René played no role. In fact, during their

² Because René Medina and his son, Remil Medina, share the same last name, we refer to each by their first name. René is a convicted felon and, accordingly, is prohibited from obtaining a license from the California Gambling Control Commission to participate in the operations of any gambling-related entity.

depositions, both De Los Reyes and René explicitly denied René's involvement in FPG's business operations.

A jury trial was scheduled to begin on October 13, 2015.³ To support its contention that René played a controlling role in FPG's hiring and promotion decisions, DFEH intended to call Agent Yolanda Sanchez, of the Department of Justice's Bureau of Gambling Control (Bureau),⁴ to testify regarding her observations of René during a previous inspection at Lucky Chances. On October 6, 2015, DFEH subpoenaed Sanchez to testify and, on October 13, disclosed her as a trial witness.

On October 15, 2015, the Bureau conducted an administrative inspection of FPG's offices as part of its separate ongoing investigation into René's involvement in Lucky Chances's business affairs. During the October 15 inspection, Sanchez interviewed De Los Reyes, who showed Sanchez documents supporting DFEH's contention that René had controlling involvement in FPG's day-to-day business operations. De Los Reyes specifically said René made final employment decisions at FPG and showed Sanchez various documents supporting that conclusion. Especially pertinent was a June 17, 2015 text message De Los Reyes received from René, which stated, "[M]aria [Escueta] dont [*sic*] give" a raise. Sanchez notified DFEH of the Bureau's findings.

When a courtroom became available on October 19, 2015, FPG responded to the inspection by filing a supplemental brief in support of its motion in limine. The motion in limine sought to exclude Chan's testimony regarding René's out-of-court statements on the grounds they were hearsay because René was not an FPG employee or agent. In its supplemental brief, FPG argued for the exclusion of all evidence obtained during the October 15 inspection on the grounds of unfair surprise. FPG also argued the inspection was unlawful because the Bureau did not have a warrant.

³ Trial did not commence until October 21, 2015, due in part to lack of an available courtroom.

⁴ The Bureau regulates gambling in California, including cardrooms and the banking corporations operating inside them.

DFEH opposed FPG's motion and submitted a declaration from Sanchez describing her interview of De Los Reyes. Sanchez stated De Los Reyes identified René as the final decision maker on hiring, firing, promotions, and pay raises at FPG. De Los Reyes also showed Sanchez text messages, on her cell phone, to and from René concerning "specific operational tasks performed or to be performed at the [FPG] office." Sanchez also found three work planners, in which De Los Reyes acknowledged writing various notes, such as "Mr. M called" and "Mr. M approved hiring."⁵ Finally, Sanchez stated the inspection was conducted in furtherance of the Bureau's own ongoing investigation of René, was not motivated by DFEH's suit, and made clear that, at the time the declaration was signed (Oct. 20, 2015), the Bureau had not provided DFEH with any of the evidence obtained during the inspection.

FPG asked for an opportunity to review the evidence obtained by Sanchez before the trial court ruled on its admissibility, but it never sought a continuance or to reopen discovery. DFEH shared the newly discovered evidence with FPG and the court as soon as it was received from the Bureau, on October 20 and 21, 2015.

After argument on FPG's motion in limine, the trial court denied the motion and ruled De Los Reyes's out-of-court statements obtained during the inspection were admissible under the party admission exception to the hearsay rule (Evid. Code, § 1220).⁶ Based on evidence obtained during the inspection, the court made a preliminary finding that René was an authorized agent of FPG, and as such, ruled his out-of-court statements to Chan were admissible. (See *id.*, § 1222 ["[e]vidence of a statement offered against a party is not made inadmissible by the hearsay rule if: [¶] (a) The statement was made by a person authorized by the party to make a statement or statements for him concerning the

⁵ De Los Reyes informed Sanchez that "Mr. M" refers to René.

⁶ Before the trial court issued its ruling, FPG stated René and De Los Reyes planned to invoke their Fifth Amendment privilege and would therefore be unavailable to testify at trial.

subject matter of the statement; and [¶] (b) The evidence is offered either after admission of evidence sufficient to sustain finding of such authority”].)

During the subsequent six-day trial, DFEH presented evidence obtained during the October 15, 2015 inspection. Chan also testified he once asked René “if there is any possibility that [Escueta] can go to either doublehand or tiles[?]” In response, “[René] basically said he didn’t trust non-Chinese people at tiles.”

The jury found FPG discriminated against Escueta because of her sex, race, and national origin by failing to consider promoting her, and that FPG failed to take all reasonable steps to prevent discrimination. The jury awarded Escueta \$16,977 in lost wages and \$17,500 in noneconomic damages. On April 14, 2016, the trial court entered a judgment of \$34,477, plus interest, against FPG and ordered injunctive relief.

After judgment was entered, FPG filed a motion for new trial, arguing the October 15, 2015 inspection resulted in unfair surprise and violated its constitutional rights. (Code Civ. Proc., § 657, subd. (3).) DFEH opposed the motion for new trial, which was denied by operation of law. (*Id.*, § 660.) FPG filed a timely notice of appeal.

II. DISCUSSION

FPG contends: (1) the trial court abused its discretion by admitting the evidence obtained on October 15, 2015, and by denying FPG’s motion for new trial; and (2) substantial evidence does not support the jury’s economic damages award. Neither argument has merit.

A. *Denial of Motion for New Trial*

FPG’s challenge to the evidence obtained by the Bureau is less than clear. FPG states it does not seek to have this court “conclusively preclud[e]” admission of the newly obtained evidence. Instead, it seeks a remand for new trial “so that FPG may have a full and fair opportunity to address the . . . ‘evidence’ seized in the [Bureau] raid, including a full and fair opportunity to argue for its exclusion” or, in the alternative, “a full and fair opportunity to prepare a defense.” This suggests FPG is challenging only the trial court’s denial of its motion for new trial. On the other hand, FPG also relies on case authority discussing exclusion of evidence as a remedy for willful withholding of that evidence

during discovery. (See, e.g., *Deeter v. Angus* (1986) 179 Cal.App.3d 241, 254–255.) Although the arguments are not clearly delineated, we address each in turn.

A motion for new trial may be granted on the ground of “[a]ccident or surprise, which ordinary prudence could not have guarded against.” (Code Civ. Proc., § 657, subd. (3).)⁷ “ “ “The determination of a motion for a new trial rests so completely within the court’s discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears.” ’ ’ ” (*Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1800.) “ “ “Surprise” as a ground for a new trial denotes some condition or a situation in which a party to an action is unexpectedly placed to his detriment. The condition or situation must have been such that ordinary prudence on the part of the person claiming surprise could not have guarded against and prevented it. Such party must not have been negligent in the circumstances.’ ” (*Id.* at p. 1806; *Wade v. De Bernardi* (1970) 4 Cal.App.3d 967, 971.)

FPG’s surprise argument fails because it could have discovered the disputed evidence long before trial if it had exercised reasonable diligence. FPG fails to explain

⁷ DFEH asserts FPG forfeited its right to a new trial on “surprise” grounds (Code Civ. Proc., § 657, subd. (3)), by previously failing to request a continuance or seeking to reopen discovery. “[A] party’s right to a new trial upon the ground of surprise” is generally “waived if the alleged surprise is not called to the court’s attention by motion for a continuance *or other relief*.” (*Noble v. Tweedy* (1949) 90 Cal.App.2d 738, 742, italics added.) DFEH relies on *Kauffman v. De Mutiis* (1948) 31 Cal.2d 429, where plaintiff’s counsel knew a material witness would not testify at trial, and made a strategic decision not to move for a continuance, which demonstrated counsel “intended to speculate upon a favorable verdict.” (*Id.* at p. 433.) “[W]here a situation arises [that] might constitute legal surprise, counsel cannot speculate on a favorable verdict. [Counsel] must act at the earliest possible moment” to notify the court and seek appropriate relief. (*Id.* at p. 432.)

This case is distinguishable, as there is no evidence FPG made a strategic decision not to move for a continuance or that it “intended to speculate upon a favorable verdict.” (*Kauffman v. De Mutiis, supra*, 31 Cal.2d at p. 432.) Instead, FPG vigorously opposed admission of the newly discovered evidence before trial and it appears a request for a continuance would have been futile, given the trial court’s implicit rejection of FPG’s “surprise” theory. Thus, we assume FPG preserved its new trial argument.

why it could not interview its own office manager, De Los Reyes, or obtain the documentary evidence, which was found at FPG’s offices. FPG cites no evidence to support its position the documents were outside its possession or control because they were on De Los Reyes’s “personal” cell phone and “personal work planner.” As FPG has not shown that “ ‘ordinary prudence on [its part] could not have guarded against and prevented’ ” the surprise, the trial court did not abuse its discretion in denying a new trial on this ground. (*Hata v. Los Angeles County Harbor/UCLA Medical Center, supra*, 31 Cal.App.4th at p. 1806.)

FPG’s constitutional basis for new trial is similarly without merit. We need not resolve DFEH’s forfeiture argument because, even if we assume the issue was preserved, FPG has still not shown—two years after the inspection—that the Bureau’s search was unconstitutional. An exception to the warrant requirement exists for administrative inspections of closely regulated industries. (*New York v. Burger* (1987) 482 U.S. 691, 693, 702, 712; *People v. Potter* (2005) 128 Cal.App.4th 611, 618.) “Under the closely-regulated-industry exception, the owner of a heavily regulated business is deemed to be on notice that his business premises will be subject to periodic warrantless administrative searches by government agents pursuant to a statutory inspection scheme.” (*Potter*, at p. 618.) Here, the inspection was conducted pursuant to the Bureau’s authority under Business and Professions Code section 19827, subdivision (a)(1)(D), which authorizes the Bureau, “without notice or warrant,” to “[s]ummarily seize, remove, and impound any equipment, supplies, documents, or records from any licensed premises for the purpose of examination and inspection.”⁸

⁸ On February 16, 2017, FPG asked us to take judicial notice of its complaint in federal court against various Bureau agents in their official and individual capacities for civil rights violations, and a stipulation regarding settlement of the complaint. DFEH did not oppose this request. We deferred ruling on the request and now deny it. We may take notice of the existence of these pleadings and court records (Evid. Code, §§ 452, subd. (d)(1), 459), but not the truth of their contents. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482 [“[w]hile we may take judicial notice of court records and official acts of state agencies [citation], the truth of matters asserted

Turning to the trial court’s evidentiary ruling, FPG invokes the trial court’s “inherent authority to preclude evidence to police an abuse of the litigation process” (*Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 286), and argues the trial court erred in failing to exercise that authority in this case. Our discovery laws “were designed to prevent trial by ambush” (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 781), but FPG presents no evidence that ambush is what occurred. FPG concedes DFEH itself did not obtain the October 15, 2015 evidence until after the close of discovery and, therefore, did not willfully withhold it. FPG contends this “is immaterial” and that, “[e]ven in the absence of a willful failure to provide discovery, a trial court should preclude the introduction of undisclosed evidence at trial.” However, we fail to see how DFEH could be faulted for failing to disclose, during discovery, evidence that was not in its possession and which it did not know existed. Nor do we see, in these circumstances, any other compelling reason to suppress such highly relevant evidence. None of the authority FPG cites is on point.

The court in *Crumpton v. Dickstein* (1978) 82 Cal.App.3d 166 (*Crumpton*), held it was error to admit the testimony of two defense expert witnesses who were not disclosed to the plaintiff in discovery nor in response to a motion to compel granted only one month before trial. The trial court erred by concluding the determining factor in whether to preclude the testimony of the two experts was whether the omission was willful. (*Id.* at pp. 170–172.) The *Crumpton* court explained: “By [the] defendant’s inclusion then of [one] additional name [but not the other two doctors’ names, the] plaintiff was no doubt lulled into a false sense of security. In denying the at-trial motion to exclude the testimony of these [two additional] witnesses simply because the omission of their names was not willful, the trial court effectively thwarted a legitimate purpose of the discovery statute by impeding plaintiff’s preparation for trial.” (*Id.* at p. 172.)

in such documents is not subject to judicial notice”].) That FPG’s complaint was filed and settled is irrelevant to the issues before us.

FPG also relies on *Castaline v. City of Los Angeles* (1975) 47 Cal.App.3d 580 (*Castaline*), which involved a personal injury action against the city arising from an automobile collision caused by a street sweeper. (*Id.* at p. 583.) The trial court excluded the testimony of a doctor who had examined a personal injury plaintiff three days before trial. (*Id.* at p. 591.) In seeking to exclude the evidence, the objecting party pointed out the plaintiff had previously stated, in response to an interrogatory, that she was “fully recovered from any injuries” received in the underlying accident. (*Id.* at pp. 591–592.) In reliance on that response, the defendant cancelled a physical exam of the plaintiff by a defense physician. The plaintiff appealed, but the reviewing court found no error. The exclusion of the physician’s testimony was within the court’s power to insure a fair trial. (*Ibid.*) The reviewing court explained: “While we doubt that California Rules of Court, [former] rule 222, prohibits parties from generating evidence—as distinguished from initiating discovery—within 30 days of trial, the defense point that [it] would be unfairly surprised by the witness had merit. The [defendant] never produced any medical testimony and its counsel’s statement that after receiving answers to interrogatories . . . , he cancelled a medical examination on behalf of the [defendant] stood unchallenged. Under all of these circumstances we cannot say that the court’s exclusion of [the doctor’s] testimony was not within its basic power to insure that all parties receive a fair trial.” (*Castaline*, at p. 592.)

Neither case advances FPG’s argument that the trial court abused its discretion. First, in this case, we are not dealing with disclosure of expert witnesses. More importantly, unlike the *Crumpton* plaintiff or the *Castaline* defendant, FPG cannot show any detrimental reliance or that it was truly surprised by evidence it could not have obtained with reasonable diligence. FPG does not point to any interrogatory response on which it detrimentally relied. In fact, FPG was aware before trial that a key issue of dispute was René’s involvement at FPG. FPG could not reasonably rely to its detriment on DFEH’s previous inability to discover evidence supporting its theory *that was in FPG’s possession and control*. No abuse of discretion has been shown.

B. *Damage Award*

FPG also argues the jury's backpay award is not supported by substantial evidence. We review a jury's damage award for substantial evidence. (*Hope v. California Youth Authority* (2005) 134 Cal.App.4th 577, 594.) "There are two aspects to a review of the legal sufficiency of the evidence. First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all reasonable inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our 'power' begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. The Court of Appeal 'was not created . . . merely to echo the determinations of the trial court. A decision supported by a mere scintilla of evidence need not be affirmed on review.' [Citation.] '[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value' [Citation.] The ultimate determination is whether a reasonable trier of fact could have found for the respondent based on the whole record. [Citation.] While substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632–1633, italics & fns. omitted.)

The goal of a lost earnings award, under California Fair Employment and Housing Act, is "to make the individual whole." (*Cloud v. Casey* (1999) 76 Cal.App.4th 895, 906, 909; accord, Civ. Code, § 3333 ["[f]or the breach of an obligation not arising from contract, the measure of damages . . . is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not".]) "The general rule is that the measure of recovery . . . is the amount of salary . . . for the period of service, less the amount which the employer affirmatively proves the employee

has earned or with reasonable effort might have earned from other employment.’ ”
(*Hope v. California Youth Authority*, *supra*, 134 Cal.App.4th at p. 595, italics omitted.)
“[D]amages may not be based upon sheer speculation or surmise, and the mere possibility
or even probability that damage will result from wrongful conduct does not render it
actionable.” (*In re Easterbrook* (1988) 200 Cal.App.3d 1541, 1544, disapproved on other
grounds by *People v. Romero* (1994) 8 Cal.4th 728, 744, fn. 10.)

FPG contends Escueta’s backpay award is problematic because the jury must have
“ ‘assume[d]’ . . . that, absent the alleged discrimination, [Escueta] would have received a
raise at a certain time and of a certain amount,” when the assumption is squarely
contradicted by undisputed documentary evidence. Not so. Evidence was presented
regarding the pay range for Level Two and Level Three proposition players. DFEH also
presented evidence of the increased earning potential of proposition players as they
advanced through the levels.

We do not agree with FPG that its records “*conclusively* demonstrate that FPG . . .
does not award raises automatically upon promotion.” (Italics added.) Wong testified
that, despite containing language showing the employee moving from a lower level to a
higher level, the records DFEH relied on did not actually reflect promotions, but only
raises based on performance. The jury was not compelled to believe Wong’s testimony.
Resolving conflicts in the record in DFEH’s favor, as we must, the record shows that,
despite varying rates of overall pay, players advancing to Level Two *were* uniformly
awarded raises *upon promotion*. Finally, DFEH presented Escueta’s pay history, which
shows she received an average raise of approximately 75 cents per hour per year, and a
\$2.00 per hour raise when she was promoted to Level Three.

It is irrelevant that there was no *direct* evidence that, absent discrimination, FPG
would have promoted Escueta on a certain date. Escueta testified she first requested
promotion to Level Two in 2010 and a Chinese male was promoted to that position
shortly thereafter in September 2010. Thus, the jury could reasonably infer that, absent
discrimination, Escueta would have been promoted to Level Two in September 2010,
would have received a raise to \$16 per hour at that time, and would have thereafter

continued to receive average raises of approximately 75 cents per hour per year. That the jury ultimately awarded less than this amount does not show its award to be unsupported. It is not fatal that the reviewing court cannot with absolute precision look at the evidence and, making the necessary manipulations, arrive at the exact figure used in a jury verdict. (*Benson Elec. Co. v. Hale Bros. Assoc., Inc.* (1966) 246 Cal.App.2d 686, 695.)

FPG has not shown the jury's economic damages award is speculative.⁹ Because FPG's contention fails on the merits, we need not address DFEH's argument that FPG forfeited its substantial evidence challenge by failing to fairly summarize the evidence in its opening brief.

III. DISPOSITION

The judgment is affirmed. DFEH shall recover its costs on appeal.

⁹ This case is nothing like *In re Easterbrook*, *supra*, 200 Cal.App.3d 1541, in which a criminal defendant sought damages for malpractice against an attorney who had represented him in criminal proceedings not yet concluded. (*Id.* at pp. 1542–1544.) Because there had been no verdict in the criminal case, the criminal defendant's prayer for damages in the amount of \$500,000 was necessarily speculative. (*Id.* at p. 1544.)

BRUINIERS, J.

WE CONCUR:

JONES, P. J.

NEEDHAM, J.

A148624