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8
9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

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13
14 **In the Matter of the Application for Initial
Key Employee License for:**

CGCC Case No. CGCC-2017-1116-7

BGC Case No. BGC-HQ2017-00002

15
16 **ARMANDO ALCANTAR**

STATEMENT OF REASONS



17
18 **Respondent.**

19 **PARTIES**

20 1. Stephanie K. Shimazu submits this Statement of Reasons solely in her official
21 capacity as the Bureau Director of the California Department of Justice, Bureau of Gambling
22 Control (Bureau).

23 2. On December 9, 2015, the Bureau received an Application for Gambling
24 Establishment Key Employee License (Initial) dated December 5, 2015, submitted by Armando
25 Alcantar (Respondent), to hold a key employee position as a dealer/supervisor at the Oceana Card
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1 Room (Oceana).¹ On December 30, 2015, the Bureau received Supplemental Background
2 Investigation Information Form from Respondent, dated December 10, 2015.²

3 3. On or about November 23, 2016, Respondent submitted a Notification of Change of
4 in Key Employee Status transferring his Application to the Central Coast Casino, where
5 Respondent is currently employed.

6 4. On or about October 2, 2017, the Bureau issued its Cardroom Key Employee
7 Background Investigation Report for Respondent's Application in which it recommended that
8 Respondent's Application be denied. The Bureau held a pre-denial telephonic conference with
9 Respondent on that same date and confirmed the denial.

10 5. On or about November 16, 2017, the Commission considered the Application and the
11 Bureau's denial recommendation, and referred the question of Respondent's suitability to an
12 evidentiary hearing, which is to be held pursuant to Business and Professions Code sections
13 19870 and 19871.³ (Cal. Code. Regs., tit. 4, § 12060, subd. (a).) Commission staff sent written
14 notice of the referral to hearing to Respondent on November 20, 2017.

15 6. Respondent submitted a Notice of Defense, dated November 30, 2017, which was
16 received by the Commission on December 8, 2017, and forwarded to Bureau on December 15,
17 2017.

18 **BURDEN OF PROOF**

19 7. Respondent has the burden of proving he is qualified to be found suitable for
20 licensure. (Bus. & Prof. Code, § 19856, subd. (a).)

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23 ¹ Respondent also applied for an interim key employee license with the Oceana in an
24 application dated October 28, 2015, that was received by the Bureau on November 2, 2015. The
25 California Gambling Control Commission issued an Interim Portable Key Employee License
number GEKE-002142, to Respondent on November 5, 2015. That interim license was cancelled
October 18, 2017.

26 ² The initial key employee application and supplemental background information form
are jointly referred hereinafter as the "Application."

27 ³ The statutes and regulations applicable to this Statement of Reasons are quoted in
28 pertinent part in Appendix A.

1 **FIRST CAUSE FOR DENIAL**

2 **(Criminal Convictions for Misdemeanor Crimes of Moral Turpitude)**

3 8. Respondent's Application is subject to denial because Respondent was criminally
4 convicted of the following:

5 a. On June 18, 1996, Respondent was convicted of violating Penal Code section
6 12020(a),⁴ possession/manufacturing/selling of dangerous weapon/etc., a misdemeanor and
7 a crime of moral turpitude, in *People v. Alcantar*, Case No. M000241233. On July 18,
8 2011, the conviction was set aside and dismissed pursuant to Penal Code section 1203.4.

9 b. On June 4, 2002, Respondent was convicted of violating Penal Code section
10 476, subdivision (a), for writing checks with insufficient funds, a misdemeanor and a crime
11 of dishonesty and moral turpitude, in *People v. Alcantar*, Case No. M000322562. On
12 January 1, 2003, the probation office notified the Court that Respondent had paid off the
13 balance owed on the bad checks and had attended the diversion class, fully complying with
14 the court's June 4, 2002, order. On July 22, 2011, the conviction was set aside and
15 dismissed pursuant to Penal Code section 1203.4.

16 (Bus. & Prof. Code, §§ 19856, subd. (b), 19857, subds. (a) & (b), & 19859, subd. (d); Cal. Code.
17 Regs., tit. 4, § 12355, subd. (a)(1) [mandatory denial] & (b)(2).)

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(Failure to Disclose, Failure to Provide Requested and Required Information,
20 and Providing Inaccurate and Misleading Information to the Bureau)**

21 9. The allegations in paragraph 8, above, are incorporated here by this reference.

22 10. Respondent's Application is subject to denial because Respondent did not disclose
23 and/or supplied misleading information material to his qualifications for licensure in that he did
24 not set forth the two criminal convictions as described in the First Cause for Denial as required on
25 his Application, which he signed under penalty of perjury.

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27 ⁴ Penal Code section 12020 was repealed without substantive effect in 2010. (Sen. Bill
28 No. 1080 (2009-2010 Reg. Sess.)) The prohibitions against the possession of a billy [club] and
brass knuckles are now found at Penal Code sections 22210 and 21810, respectively.

1 vehicle. Respondent told the arresting officer that the baseball bat was his and was for playing
2 baseball. He denied to the arresting officer having any knowledge of the brass knuckles or the
3 knife. He was arrested at that time based upon the possession of illegal weapons (Pen. Code §
4 12020, subd. (a)), for his possession of the baseball bat, as a billy [club], and the brass knuckles.

5 16. In a statement given to Bureau regarding his February 29, 1996, arrest, Respondent
6 stated that the baseball bat and the knife were left in his car by his cousin. This statement
7 contradicts his statements to the sheriff's officer at the time of his arrest. Respondent either lied
8 to the sheriff's officer at the time of his arrest, or lied to Bureau in response to its informational
9 request.

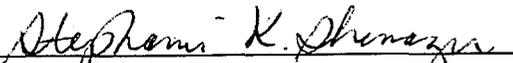
10 (Bus. & Prof. Code, §§ 19856, subd. (b), 19857, subds. (a) & (b), 19859, subds. (a) & (b)
11 [mandatory denial] & 19866; Cal. Code. Regs., tit. 4, § 12355, subd. (a)(1) [mandatory denial] &
12 (b)(2).)

13 **PRAYER**

14 WHEREFORE, Bureau Director Stephanie K. Shimazu requests that following the hearing
15 to be held on the matters herein alleged, the Commission issue a decision:

- 16 1. Denying the Application submitted by Respondent, and
17 2. Taking such other and further action as the Commission may deem appropriate.

18
19 Dated: March 1, 2018

20 
21 STEPHANIE K. SHIMAZU, Bureau Director
22 California Department of Justice
23 Bureau of Gambling Control
24 Complainant
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1 (d) Take actions deemed to be reasonable to ensure that no
2 ineligible, unqualified, disqualified, or unsuitable persons are
associated with controlled gambling activities.

3 4. Business and Professions Code section 19854, subdivision (a), provides:

4 Every key employee shall apply for and obtain a key employee
5 license.

6 5. Business and Professions Code section 19870 provides:

7 (a) The commission, after considering the recommendation of
8 the [Bureau] chief and any other testimony and written comments as
9 may be presented at the meeting, or as may have been submitted in
writing to the commission prior to the meeting, may either deny the
10 application or grant a license to an applicant who it determines to be
qualified to hold the license.

11 (b) When the commission grants an application for a license or
12 approval, the commission may limit or place restrictions thereon as it
may deem necessary in the public interest, consistent with the policies
described in this chapter.

13 (c) When an application is denied, the commission shall prepare
14 and file a detailed statement of its reasons for the denial.

15 (d) All proceedings at a meeting of the commission relating to a
license application shall be recorded stenographically or by audio or
16 video recording.

17 (e) A decision of the commission denying a license or approval,
18 or imposing any condition or restriction on the grant of a license or
approval may be reviewed by petition pursuant to Section 1085 of the
19 Code of Civil Procedure. Section 1094.5 of the Code of Civil
Procedure shall not apply to any judicial proceeding described in the
20 foregoing sentence, and the court may grant the petition only if the
court finds that the action of the commission was arbitrary and
capricious, or that the action exceeded the commission's jurisdiction.

21 6. Business and Professions Code section 19871 provides:

22 (a) The commission meeting described in Section 19870 shall
23 be conducted in accordance with regulations of the commission and as
follows:

24 (1) Oral evidence shall be taken only upon oath or
affirmation.

25 (2) Each party shall have all of the following rights:

26 (A) To call and examine witnesses.

27 (B) To introduce exhibits relevant to the issues of the
28 case.

1 (C) To cross-examine opposing witnesses on any
2 matters relevant to the issues, even though the matter was not
covered on direct examination.

3 (D) To impeach any witness, regardless of which party
4 first called the witness to testify.

5 (E) To offer rebuttal evidence.

6 (3) If the applicant does not testify in his or her own behalf,
7 he or she may be called and examined as if under cross-
8 examination.

9 (4) The meeting need not be conducted according to
10 technical rules relating to evidence and witnesses. Any relevant
11 evidence may be considered, and is sufficient in itself to support a
finding, if it is the sort of evidence on which responsible persons
are accustomed to rely in the conduct of serious affairs, regardless
of the existence of any common law or statutory rule that might
make improper the admission of that evidence over objection in a
civil action.

12 (b) Nothing in this section confers upon an applicant a right to
13 discovery of the department's^[5] investigative reports or to require
14 disclosure of any document or information the disclosure of which is
otherwise prohibited by any other provision of this chapter.

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

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

20 8. California Code of Regulations, title 4, section 12060, provides:

21 (a) If the Executive Director determines it is appropriate, he or
22 she may set an application for consideration at a GCA hearing in
23 advance of a meeting pursuant to Section 12054. The Executive
24 Director shall give notice to the applicant, pursuant to paragraph (2)
25 subsection (c) of Section 12052, to the Office of the Attorney General,
26 and to the Bureau no later than 90 calendar days in advance of the
27 GCA hearing. The Executive Director's determination will be based
on information contained in the Bureau's report or other appropriate
sources including, without limitation, a request from the Bureau or
applicant as well as the Commission's operational considerations. The

28 ⁵ "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 Commission retains the authority to refer the matter to an APA
2 hearing pursuant to subsection (a) of Section 12056 or hear the matter
3 at a Section 12054 meeting if the Commission deems it appropriate.

4 (b) When the Commission has elected to hold a GCA hearing,
5 the Executive Director shall give notice to the applicant, pursuant to
6 paragraph (2) subsection (c) of Section 12052, to the Office of the
7 Attorney General, and to the Bureau no later than 60 calendar days in
8 advance of the GCA hearing.

9 (c) The presiding officer shall have no communication with the
10 Commission or Commission staff upon the merits, or upon
11 information or documents related to the application prior to the
12 evidentiary hearing. The Executive Director shall designate a
13 presiding officer which shall be:

- 14 (1) A member of the Commission's legal staff; or,
- 15 (2) An Administrative Law Judge.

16 (d) The applicant or the complainant, or the applicant and the
17 complainant, may request a continuance in writing to the Executive
18 Director stating the reason for the continuance and any proposed
19 future hearing dates. The Executive Director or Commission may
20 approve the request.

21 (e) The complainant shall provide to the applicant, at least 45
22 calendar days prior to the GCA hearing, and the applicant shall
23 provide to the complainant, at least 30 calendar days prior to the GCA
24 hearing, the following items:

- 25 (1) A list of potential witnesses with the general subject of
26 the testimony of each witness;
- 27 (2) Copies of all documentary evidence intended to be
28 introduced at the hearing and not previously provided;
- (3) Reports or statements of parties and witnesses, if
available; and
- (4) All other written comments or writings containing
relevant evidence.

(f) A presiding officer shall rule on the admissibility of
evidence and on any objections raised except for objections raised
under subsection (g). A ruling by the presiding officer shall be final.

1 (1) In advance of the GCA hearing, upon a motion of a
2 party or by order of the presiding officer, the presiding officer
3 may conduct a pre-hearing conference, either in person, via
4 teleconference, or by email exchange, subject to the presiding
5 officer's availability and shall issue a pre-hearing order if
6 appropriate or requested by either party. The pre-hearing
7 conference and order may address the following:

8 (A) Evidentiary issues;

9 (B) Witness and exhibit lists;

10 (C) Alterations in the Bureau recommendation;

11 (D) Stipulation for undisputed facts including the
12 admission of the Bureau's report; and

13 (E) Other issues that may be deemed appropriate to
14 promote the orderly and prompt conduct of the hearing.

15 (2) The GCA hearing need not be conducted according to
16 technical rules of evidence. Any relevant evidence may be
17 considered, and is sufficient in itself to support findings if it is the
18 sort of evidence on which reasonable persons are accustomed to
19 rely in the conduct of serious affairs, regardless of the existence
20 of any common law or statutory rule that might make improper
21 the admission of that evidence over objection in a civil action.

22 (g) The Commission may, at any time upon a showing of
23 prejudice by the objecting party:

24 (1) Prohibit the testimony of any witness or the introduction
25 of any documentary evidence that has not been disclosed pursuant
26 to subsection (e); or

27 (2) Continue any meeting or hearing as necessary to
28 mitigate any prejudice.

(h) The complainant shall present all facts and information in
the Bureau report, if any, and the results of the Bureau's background
investigation, and the basis for any recommendation, if the Bureau
filed one with the Commission according to Business and Professions
Code section 19868, to enable the Commission to make an informed
decision on whether the applicant has met his, her, or its burden of
proof. The complainant may but is not required to recommend or seek
any particular outcome during the evidentiary hearing, unless it so
chooses.

1 (i) The burden of proof is on the applicant at all times to prove
2 his, her, or its qualifications to receive any license or other approval
3 under the Act.

4 (j) The applicant may choose to represent himself, herself, or
5 itself, or may retain an attorney or lay representative.

6 (k) Except as otherwise provided in subsection (g), the
7 complainant and applicant shall have the right to call and examine
8 witnesses under oath; to introduce relevant exhibits and documentary
9 evidence; to cross-examine opposing witnesses on any relevant matter,
10 even if the matter was not covered in direct examination; to impeach
11 any witness, regardless of which party first called the witness to
12 testify; and to offer rebuttal evidence. If the applicant does not testify
13 on his, her or its own behalf, the applicant may be called and
14 examined, under oath, as if under cross-examination.

15 (l) Oral evidence shall be taken upon oath or affirmation,
16 which may be administered by the Executive Director, a member of
17 the Commission, or the presiding officer, if an Administrative Law
18 Judge.

19 (m) At the conclusion of the evidentiary hearing, the members
20 of the Commission shall take the matter under submission, may
21 discuss the matter in a closed session meeting, and may schedule
22 future closed session meetings for deliberation.

23 SPECIFIC STATUTORY AND REGULATORY PROVISIONS

24 9. Business and Professions Code section 19856, subdivision (a) provides in part:

25 The burden of proving his or her qualifications to receive any
26 license is on the applicant.

27 10 Business and Professions Code section 19854, subdivision (b) provides:

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

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:

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

(b) A person whose prior activities, criminal record, if any,

1 reputation, habits, and associations do not pose a threat to the
2 public interest of this state, or to the effective regulation and
3 control of controlled gambling, or create or enhance the dangers
4 of unsuitable, unfair, or illegal practices, methods, and activities
5 in the conduct of controlled gambling or in the carrying on of the
6 business and financial arrangements incidental thereto.

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

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

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

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

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28 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.