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

13 In the Matter of the Statement of Reasons for
Denial of Application for a Gambling
14 Establishment Key Employee License for:

15 **MICHAEL MARCELLO LOPEZ**



16
17 **Respondent.**

BGC Case No. BGC-HQ2018-00026SL

CGCC Case No: CGCC-2018- 0510-Eii

18 **STATEMENT OF REASONS**

Hearing Date: January 25, 2019
Hearing Time: 10:00 a.m.
Hearing Place: 2399 Gateway Oaks, Ste. 100,
Sacramento, CA 95833

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21 Complainant alleges as follows:

22 **PARTIES**

23 1. Stephanie K. Shimazu (Complainant) brings this Statement of Reasons solely in her
24 official capacity as Director of the California Department of Justice, Bureau of Gambling Control
25 (Bureau).

26 2. On June 17, 2016, Michael Marcello Lopez (Respondent), formerly employed as a
27 cage cashier, was promoted to cage supervisor at both the Delta Casino and Kings Card Club. On
28 July 25, 2016, the Bureau received Respondent's application for an Interim Key Employee

1 License. On August 9, 2016, Respondent was issued Interim Key Employee License GEKE-
2 002232 (valid through August 31, 2018). On August 23, 2016, the Bureau received Respondent's
3 Supplemental Background Investigation Information, and page one of Respondent's Application
4 for Gambling Establishment Key Employee License, and on September 20, 2016, the Bureau
5 received page 2 of the latter application. Respondent's Application for Gambling Establishment
6 Key Employee License and Supplemental Background Investigation Information are collectively
7 referred to herein as Application.

8 3. On March 14, 2018, Assistant Director Yolanda Morrow, and Manager II Frances
9 Asuncion, conducted a pre-denial meeting with Respondent by telephone.

10 4. Also on March 14, 2018, the Bureau issued its Level III Cardroom Key Employee
11 Background Investigation Report, which recommended that Respondent's application for a
12 Gambling Establishment Key Employee License be denied. On the basis of that recommendation
13 and pursuant to California Code of Regulations, title 4, section 12354, subdivision (e)(5),
14 Respondent's Interim Key Employee License was cancelled effective March 21, 2018.¹

15 5. At its May 10, 2018, meeting, the California Gambling Control Commission
16 (Commission) referred the matter of Respondent's application for a Gambling Establishment Key
17 Employee License to an evidentiary hearing pursuant to California Code of Regulations, title 4,
18 section 12054, subdivision (a)(2), to be conducted as a GCA hearing under California Code of
19 Regulations, title 4, section 12060.

20 6. On or about May 20, 2018, Respondent submitted a signed Notice of Defense
21 indicating that he would be representing himself.

22 7. On July 31, 2018, Respondent was notified that the evidentiary hearing would be held
23 before the Commission commencing at 10:00 a.m., on January 25, 2019.

24 **BURDEN OF PROOF**

25 8. Respondent has the burden of proving that he is qualified to receive a license. (Bus.
26 & Prof. Code, § 19856, subd. (a).)

27 ¹ 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 **(Failure to Provide and/or Disclose Material Information)**

3 9. Respondent's Application is subject to denial on the ground that Respondent failed to
4 provide or to disclose the following employment information that is material to the Application:

5 a. In 2013, Respondent was employed as a security guard at Safe Environment
6 Business Solutions, and that Respondent was issued a security guard license by the
7 California Department of Consumer Affairs valid through June 30, 2015.

8 b. That from May to August of 2013, Respondent was employed at Secrets, a
9 retail store.

10 c. That in 2008, Respondent was employed at Pizza Factory at its Modesto
11 location, and subsequently at its Lockeford location.

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

14 **SECOND CAUSE FOR DENIAL**

15 **(Providing False or Misleading Information)**

16 10. Respondent's Application is subject to denial on the ground that Respondent provided
17 false or misleading information in connection with the Application in that Respondent advised the
18 Bureau that he had been laid off from his employment as a key employee at the Cameo Club
19 when Respondent was terminated from that employment and is ineligible for rehire because he
20 failed to follow game rules.

21 (Bus. & Prof. Code, §§ 19856, 19857, 19859, subds. (a) & (b) [mandatory denial], 19857, 19866,
22 Cal. Code Regs., tit. 4, § 12355, subds. (a)(1) [mandatory denial] & (b)(2).)

23 **THIRD CAUSE FOR DENIAL**

24 **(Unsuitable for Licensure)**

25 11. Respondent's Application is subject to denial on the ground that that Respondent is
26 unsuitable for licensure because he has engaged in a pattern of noncompliance with the laws
27 regulating controlled gambling, which reflects either a lack of understanding of, or an
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1 indifference and disregard for the importance and seriousness of, the Gambling Control Act's
2 regulatory and application requirements, in that:

3 a. Respondent acted in the ways alleged in paragraphs 9 and 10, above, which are
4 incorporated herein by this reference.

5 b. Respondent was dilatory in and about the licensure requirements of the
6 Gambling Control Act in that Respondent began working as a cage supervisor, a position
7 requiring a key employee license, on June 17, 2016, and was required to apply for an
8 interim key employee license within ten days thereof, but Respondent's application for an
9 interim key employee license was not received by the Bureau until July 25, 2016, which
10 was 38 days after Respondent began working in a key employee capacity and 28 days after
11 the application was due.

12 c. Respondent was dilatory in and about the licensure requirements of the
13 Gambling Control Act in that Respondent began working as a cage supervisor, a position
14 requiring a key employee license, on June 17, 2016, and was required to submit an
15 application for an initial key employee license within 30 days thereafter, but Respondent's
16 incomplete application for an initial key employee license was not received by the Bureau
17 until August 23, 2016, which was 67 days after Respondent began working in a key
18 employee capacity and 37 days after the application was due, and the remainder of
19 Respondent's application for an initial key employee license was not received by the
20 Bureau until September 20, 2016, which was 95 days after Respondent began working in a
21 key employee capacity and 65 days after Respondent's completed application was due.

22 (Bus. & Prof. Code, §§ 19856, 19857, 19859, subds. (a) & (b) [mandatory denial], 19866, Cal.
23 Code Regs., tit. 4, § 12355, subds. (a)(1) [mandatory denial] & (b)(2).)

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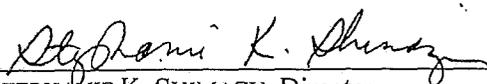
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PRAYER

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

1. Denying Respondent's Application for licensure as a key employee; and
2. Taking such other and further action as the Commission may deem appropriate.

Dated: November 16, 2018


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

1 condition, restrict, discipline, or take action against the license of an
2 individual owner endorsed on the license certificate of the gambling
3 enterprise whether or not the commission takes action against the
4 license of the gambling enterprise.

* * *

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

8 4. Business and Professions Code, section 19870 provides:

9 (a) The commission, after considering the recommendation of
10 the chief^[3] and any other testimony and written comments as may be
11 presented at the meeting, or as may have been submitted in writing to
12 the commission prior to the meeting, may either deny the application
13 or grant a license to an applicant who it determines to be qualified to
14 hold the license.

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

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

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

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

5. Business and Professions Code, section 19871 provides:

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

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

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

³ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

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(A) To call and examine witnesses.

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

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

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

(E) To offer rebuttal evidence.

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

(4) The meeting need not be conducted according to technical rules relating to evidence and witnesses. Any relevant 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.

(b) Nothing in this section confers upon an applicant a right to discovery of the department's⁴ investigative reports or to require disclosure of any document or information the disclosure of which is otherwise prohibited by any other provision of this chapter.

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

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

* * *

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

⁴ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

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

3 If the Commission elects to hold an evidentiary hearing, the
4 hearing will be conducted as a GCA hearing under Section 12060,
5 unless the Executive Director or the Commission determines the
6 hearing should be conducted as an APA hearing under Section
7 12058

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

9 (a) If the Executive Director determines it is appropriate, he or
10 she may set an application for consideration at a GCA hearing in
11 advance of a meeting pursuant to Section 12054. The Executive
12 Director shall give notice to the applicant, pursuant to paragraph (2)
13 subsection (c) of Section 12052, to the Office of the Attorney General,
14 and to the Bureau no later than 90 calendar days in advance of the
15 GCA hearing. The Executive Director's determination will be based on
16 information contained in the Bureau's report or other appropriate
17 sources including, without limitation, a request from the Bureau or
18 applicant as well as the Commission's operational considerations. The
19 Commission retains the authority to refer the matter to an APA
20 hearing pursuant to subsection (a) of Section 12056 or hear the matter
21 at a Section 12054 meeting if the Commission deems it appropriate.

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

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

(1) A member of the Commission's legal staff; or,

(2) An Administrative Law Judge.

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

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

(1) A list of potential witnesses with the general subject of
the testimony of each witness;

1 (2) Copies of all documentary evidence intended to be
2 introduced at the hearing and not previously provided;

3 (3) Reports or statements of parties and witnesses, if
4 available; and

5 (4) All other written comments or writings containing
6 relevant evidence.

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

10 (1) In advance of the GCA hearing, upon a motion of a
11 party or by order of the presiding officer, the presiding officer
12 may conduct a pre-hearing conference, either in person, via
13 teleconference, or by email exchange, subject to the presiding
14 officer's availability and shall issue a pre-hearing order if
15 appropriate or requested by either party. The pre-hearing
16 conference and order may address the following:

17 (A) Evidentiary issues;

18 (B) Witness and exhibit lists;

19 (C) Alterations in the Bureau recommendation;

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

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

24 (2) The GCA hearing need not be conducted according to
25 technical rules of evidence. Any relevant evidence may be
26 considered, and is sufficient in itself to support findings if it is
27 the sort of evidence on which reasonable persons are accustomed
28 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.

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

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

(2) Continue any meeting or hearing as necessary to
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

1 filed one with the Commission according to Business and Professions
2 Code section 19868, to enable the Commission to make an informed
3 decision on whether the applicant has met his, her, or its burden of
4 proof. The complainant may but is not required to recommend or seek
5 any particular outcome during the evidentiary hearing, unless it so
6 chooses.

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

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

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

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

25 (m) At the conclusion of the evidentiary hearing, the members
26 of the Commission shall take the matter under submission, may
27 discuss the matter in a closed session meeting, and may schedule
28 future closed session meetings for deliberation.

SPECIFIC STATUTORY AND REGULATORY PROVISIONS

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

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

26 (b) An application to receive a license constitutes a request for a
27 determination of the applicant's general character, integrity, and ability to
28 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

1 and dishonest elements and would be conducted honestly. (a) The
2 burden of proving his or her qualifications to receive any license is
3 on the applicant.

4 10. Business and Professions Code, section 19857 provides:

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

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

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

16 (c) A person that is in all other respects qualified to be licensed
17 as provided in this chapter.

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

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

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

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

28 12. 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.

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13. Business and Professions Code section 19850 provides, in part:

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

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

(x) "Key employee" means any natural person employed in the operation of a gambling enterprise in a supervisory capacity or empowered to make discretionary decisions that regulate gambling operations, including, without limitation . . . cashier operations supervisors . . . or any other natural person designated as a key employee by the department for reasons consistent with the policies of this chapter.

15. Business and Professions Code section 19854 provides, in part:

(a) Every key employee shall apply for and obtain a key employee license.

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

16. California Code of Regulations, title 4, section 12354 provides, in part:

(a) An individual, if holding a valid work permit for any gambling enterprise, may immediately begin to work as an interim key employee provided that the individual submit the following to the Bureau within 10 days of hiring:

(1) An Application for Interim Key Employee License, BGC-035 (Rev. 07/17)

* * *

(c) Interim key employee license approvals are subject to the following conditions:

(1) An application package for an initial portable personal key employee license as required in subsection (c) of Section

1 12350 must be submitted to the Bureau within 30 days of
2 assuming a key employee position.

3 * * *

4 (e) With ten day's advance written notice to the interim key
5 employee and to the gambling enterprise, the Executive Director shall
6 cancel the interim key employee license based upon the following:

7 (5) A Bureau recommendation of denial of the applicant's
8 key employee application.

9 17. California Code of Regulations, title 4, section 12355 provides, in part:

10 (a) An application for a portable personal key employee license
11 shall be denied by the Commission if any of the following applies:

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

18 * * *

19 (b) An application for a key employee license may be denied if:

20 * * *

21 (2) The Commission finds that the applicant's past
22 behavior calls into question the applicant's qualification
23 requirements and considerations outlined in Business and
24 Professions Code section 19856.
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