CALIFORNIA GAMBLING
CONTROL COMMISSION

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BEFORE THE

CALIFORNIA GAMBLING CONTROL COMMISSION

STATE OF CALIFORNIA

In the Matter of the Second Amended Accusation and Statement of Issues Against: **MICHAEL A. WHITELEY, JR. (GEOW-002034), sole proprietor, doing business as: MIKE'S CARD CASINO (GEGE-000811);** **824 North Yosemite Avenue** **Oakdale, California 95361** **Respondent.**	**OAH No. 2016070163** **BGC Case No.** BGC- HQ2016-00001AC **SECOND AMENDED ACCUSATION AND STATEMENT OF ISSUES**

Complainant alleges as follows:

PARTIES

1. Wayne J. Quint, Jr. (Complainant) brings this Second Amended Accusation and Statement of Issues solely in his official capacity as the Director[1] of the California Department of Justice, Bureau of Gambling Control (Bureau).

[1] On April 7, 2017, Complainant's title was changed from "Chief" to "Director".

2. Respondent Michael A. Whitley, Jr. (Respondent) is the sole proprietor of Mike's Card Casino, a licensed gambling establishment, located at 824 North Yosemite Avenue in Oakdale, California. Respondent's Owner's Gambling License number is GEOW-002034. Mike's Card Casino's License number is GEGE-000811.

3. On July 7, 2016, subsequent to the filing of the original Accusation in this matter, the California Gambling Control Commission (Commission), at a properly noticed, regular Commission meeting, considered the Respondent's application to renew his and the Mike's Card Casino's licenses, which expired on July 31, 2016.[2] The Commission voted to refer the issue of Respondent's suitability for re-licensure to a hearing to be consolidated with the hearing on the already-filed Accusation.[3]

SUMMARY OF THE CASE

4. This proceeding seeks to deny Respondent's application to renew his owner's license and consequently also his gambling establishment's license, as well as revoke those licenses. Additionally, Complainant seeks the imposition of appropriate fines, penalties and costs as allowed by law. Respondent is not suitable for continued licensure under the Gambling Control Act (Act). As alleged in this Second Amended Accusation and Statement of Issues, Respondent conducted illegal house-banked card games in the gambling establishment; allowed an unlicensed person to unlawfully conduct and bank games in the gambling establishment; allowed his father, an unlicensed person, to exercise management and control of the gambling establishment's operation; failed to maintain the required surveillance system at the gambling establishment; failed to protect the integrity of the drop count; and aided and abetted the filing with the Bureau of a false business contract for the sale of the assets of Mike Card's Casino. As

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[2] Unless the Commission determines otherwise, when a licensee submits an application to renew his or her owner's license and the Commission grants that application, the renewal of the owner's license shall effectuate the renewal of every other license endorsed thereon. (Bus. & Prof. Code, § 19876, subd. (d).)

[3] The Commission also issued Respondent an interim renewal license, which is valid through July 31, 2018, or the final conclusion of the proceedings in this matter. (Cal. Code. Regs., tit. 4, § 12035, subd. (b)(2).) The interim renewal license allows Respondent to continue to operate Mike's Card Casino while this matter is pending.

a consequence of this conduct, Respondent has demonstrated that he is unqualified for, disqualified from, and unsuitable for, continued licensure. Respondent's continued licensure is inimical to the public health, safety, and welfare; and a threat to the effective regulation of controlled gambling. (Bus. & Prof. Code, §§ 19801, subds. (d) & (g), & 19823, subd. (a).)[4]

JURISDICTION AND COST RECOVERY

5. The California Gambling Control Commission (Commission) has jurisdiction over the operation and concentration of gambling establishments and all persons and things having to do with the operation of gambling establishments. (Bus. & Prof. Code, § 19811, subd. (b).) Operating a gambling establishment in California is a revocable privilege. (Bus. & Prof. Code, § 19801, subd. (k).) The Act tasks the Bureau with, among other responsibilities, investigating suspected violations of the Act and initiating disciplinary actions. (Bus. & Prof. Code, §§ 19826, subds. (c) & (e), & 19930, subd. (b).) Upon the Bureau filing an accusation, the Commission proceeds under Government Code section 11500 et seq. (Bus. & Prof Code, § 19930, subd. (b); see Cal. Code Regs., tit. 4, § 12554, subd. (a).) The Commission's disciplinary powers include, among other things, revocation and the imposition of a fine, a monetary penalty and costs. (Cal. Code Regs., tit. 4, § 12554, subd. (d).)

6. In a matter involving revocation or suspension the Bureau may recover its costs of investigation and the costs of prosecuting the case. (Bus. & Prof. Code, § 19930, subd. (d).)

BURDEN OF PROOF

7. The burden of proving his qualifications to receive any license, including the renewal of his license, is on Respondent. (Bus. & Prof. Code, §§ 19856, subd. (a) & 19876, subd. (a).) The burden of proving that the licenses should be revoked is on the Complainant.

FIRST CAUSE OF ACTION

(Unlawful House-Banked Games)

8. Respondent's licenses are subject to denial and/or revocation because from in or about January 2015, until in or about May 2015, the exact dates of which are presently

[4] The statutes and regulations applicable to this Accusation are quoted in pertinent part in Appendix A.

unknown, Respondent dealt, played, carried on, caused to be played and/or offered for play house-banked card games in violation of Penal Code section 330.[5] (Bus. & Prof. Code, §§ 19856, subd. (c), 19857, subds. (a) & (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

SECOND CAUSE OF ACTION

(Unlawful Banked Games)

9. Respondent's licenses are subject to denial and/or revocation because from in or about May 2015, until in or about February 2016, the exact dates of which are presently unknown, Respondent allowed and aided Joe Chavez, an unlicensed person, to deal, play, carry on, cause to be played and/or offer for play banked card games in violation of Penal Code sections 330 and 330.11. (Bus. & Prof. Code, §§ 19856, subd. (c),19857, subds. (a) & (b), 19920, 19922 & 19984; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

THIRD CAUSE OF ACTION

(Unqualified for Licensure)

10. Respondent's licenses are subject to denial and/or revocation in that, in addition to the conduct set forth in paragraphs 8 and 9, and incorporated herein by reference, Respondent has demonstrated an unwillingness or inability to comply with the Act, and the regulations promulgated thereunder, in that:

a. From on or about February 3, 2016, and for a presently unknown period of time before and after, Respondent failed to maintain in operation a mandatory surveillance system. (Cal. Code. Regs., tit. 4, § 12372.)

b. From on or about March 25, 2015, and for a presently unknown period of time

[5] A "banking game" is one in which the player-dealer position does not "continuously and systematically" rotate. (Pen. Code, § 330.11.) "In a banking game the banker . . . pays all the winnings and suffers all the losses; he is the one against the many, which is the supreme test of a banking game." (*People v. Ambrose* (1953) 122 Cal.App.2d Supp. 966, 970.) The banker "has a direct interest in the outcome of the game, because the amount of money [he] will have to pay out depends upon whether each of the individual bets is won or lost." (*Western Telcon, Inc. v. Cal. State Lottery* (1996) 13 Cal.4th 475, 488.) A "house-banked game" is one in which the gambling establishment (house) is the banker.

before and after, Respondent unlawfully employed Michael A. Whiteley, Sr., his father, in a key employee position. At that time, Michael A. Whiteley, Sr., did not hold a valid key employee license. (Bus. & Prof. Code, §§ 19805, subd. (x), & 19850.)

c. On or about April 2, 2016, Respondent unlawfully allowed Holley Wheeler to conduct the count of the drop.[6] At that time, Holly Wheeler was neither licensed by the Commission nor did she hold a valid work permit. (Cal. Code. Regs., tit. 4, § 12385, subd. (a)(2).)

(Bus. & Prof. Code, §§ 19856, subd. (c), 19857, subds. (a) & (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

FOURTH CAUSE OF ACTION

(Supplying Untrue or Misleading Information)

11. Respondent's licenses are subject to denial and/or revocation because on or about October 10, 2016, Respondent submitted to the Bureau the Business Purchase Agreement (BPA), signed on October 5, 2016, that purports to sell all of the assets of Mike's Card Casino to Richard Patterson, Jr., for the total sum of $20,000. Respondent submitted the BPA to the Bureau for review and eventual approval by the Commission, as required by the Act. The BPA submitted by Respondent was contrived and misleading and did not accurately reflect the actual terms of the sale by Respondent to Mr. Patterson. On or about January 4, 2017, the Bureau learned that the actual purchase agreement between Respondent and Mr. Patterson was for a total sale price of $1,200,000, that the ostensible sale price of $20,000 was merely a down payment, and that the financing of the purchase price contained terms that could cause the non-approval of the agreement.

(Bus. & Prof. Code, §§ 19856, subd. (c), 19857, subd. (a) & (b), 19859, subd. (b) [mandatory denial], 19866, & 19922.)

[6] "Drop" means the total amount of compensation collected from patrons of a gambling establishment to play in controlled games. (Cal. Code. Regs., tit. 4, § 12002, subd. (l).)

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 to renew California State Gambling License number GEOW-002034, issued to Michael A. Whiteley, Jr., the sole proprietor of Mike's Card Casino, a licensed gambling establishment;

2. Denying Respondent's application to renew California State Gambling License number GEGE-00081, issued to Mike's Card Casino, a licensed gambling establishment;

3. Revoking California State Gambling License number GEOW-002034, issued to Michael A. Whiteley, Jr., the sole proprietor of Mike's Card Casino, a licensed gambling establishment;

4. Revoking California State Gambling License number GEGE-00081, issued to Mike's Card Casino, a licensed gambling establishment;

5. Fining and/or imposing a penalty on Michael A. Whiteley, Jr., according to proof and to the appropriate extent allowed by law;

6. Awarding Complainant the costs of investigation and costs of bringing this Accusation before the Commission, including attorneys' fees, pursuant to Business and Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and

7. Taking such other and further action as the Commission may deem appropriate.

Dated: May 11th, 2017

WAYNE J. QUINT, JR., Director
Bureau of Gambling Control
California Department of Justice

APPENDIX A – STATUTORY AND REGULATORY PROVISIONS

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

(d) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

* * *

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

* * *

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

2. 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, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the department for reasons consistent with the policies of this chapter.

3. Business and Professions Code, section 19811 provides, in part:

> (b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

4. Business and Professions Code section 19823 provides, in part:

> (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.

5. Business and Professions Code, section 19826 provides, in part:

> The department[7] . . . shall have all of the following responsibilities:
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> * * *
>
> (c) To investigate suspected violations of this chapter or laws of this state relating to gambling . . . .
>
> * * *
>
> (e) To initiate, where appropriate, disciplinary actions as provided in this chapter. In connection with any disciplinary action, the department may seek restriction, limitation, suspension, or revocation of any license or approval, or the imposition of any fine upon any person licensed or approved.

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

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

> Every person . . . 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 . . . . In any criminal prosecution for violation of this section, the punishment shall be as provided in Section 337j of the Penal Code.

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

> (a) Any person who the commission determines is qualified to receive a state license, having due consideration for the proper protection of the health, safety, and general welfare of the residents of the State of California and the declared policy of this state, may be issued a license. The burden of proving his or her qualifications to receive any license is on the applicant.
>
> * * *
>
> (c) In reviewing the application for any license, the commission shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the gambling operations with respect to which the license would be issued are free from criminal and dishonest elements and would be conducted honestly.

8. 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, 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.

9. Business and Profession Code, section 19859, subdivision (b), provides:

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

10. 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.

11. Business and Professions Code section 19876 provides, in part:

> (a) Subject to the power of the commission to deny, revoke, suspend, condition, or limit any license, as provided in this chapter, a license shall be renewed biennially.
>
> * * *
>
> (d) Unless the commission determines otherwise, renewal of an owner's gambling license shall be deemed to effectuate the renewal of every other gambling license endorsed thereon.

12. Business and Professions Code section 19920 provides:

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

13. Business and Professions Code section 19922 provides:

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

14. Business and Professions Code section 19930 provides, in part:

> (b) If, after any investigation, the department is satisfied that a license, permit, finding of suitability, or approval should be suspended or revoked, it shall file an accusation with the commission in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
>
> * * *
>
> (d) In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the department the reasonable costs of the investigation and prosecution of the case.
>
> (1) The costs assessed pursuant to this subdivision shall be fixed by the administrative law judge and may not be increased by the commission. When the commission does not adopt a proposed decision and remands the case to the administrative law judge, the administrative law judge may not increase the amount of any costs assessed in the proposed decision.
>
> (2) The department may enforce the order for payment in the superior court in the county in which the administrative hearing was held. The right of enforcement shall be in addition to any other rights that the division may have as to any licensee to pay costs.
>
> (3) In any judicial action for the recovery of costs, proof of the commission's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

15. Business and Professions Code section 19984 provides:

> Notwithstanding any other law, a licensed gambling enterprise may contract with a third party for the purpose of providing proposition player services at a gambling establishment subject to the following conditions:

(a) Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance by the department, and in no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services at gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess, and the department may collect, reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

(c) The department, pursuant to regulations of the commission, is empowered to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating third-party providers of proposition player services, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight. The department may adopt emergency regulations in order to implement this subdivision.

(d) No agreement or contract between a licensed gambling enterprise and a third party concerning the provision of proposition player services shall be invalidated or prohibited by the department pursuant to this section until the commission establishes criteria for, and makes determinations regarding the licensure or registration of, the provision of these services pursuant to subdivision (b).

16. California Code of Regulations, title 4, section 12002 provides, in part:

(l) "Drop" means any and all player collection fees received from patrons or TPPPS companies by a gambling enterprise to play in controlled games, not including tournament fees, jackpot collections, or payments under contracts for third-party proposition player services.

17. California Code of Regulations, title 4, section 12035 provides, in part:

(b) The following conditions shall apply to all interim renewal licenses issued under subsection (a):

* * *

(2) An interim license shall be valid for a period of two years from the date the previous license expires, or until a decision is final under Section 12066, whichever is earlier, and is not subject to renewal. The Commission may issue additional interim renewal licenses if the hearing process has not been, or will not be, concluded by the expiration date of the current interim renewal license.

18. California Code of Regulations, title 4, section 12372 provides:

(a) No later than December 1, 2011, each gambling establishment in Tier I and Tier II, as provided in subsection (b) of Section 12380, shall develop and implement a written security and surveillance plan for the gambling establishment that includes, but is not limited to, provisions for the following:

(1) Close monitoring and control of all controlled gambling and gaming activity;

(2) Close monitoring and control of access to restricted areas of the gambling establishment that include, but are not limited to, cages, count rooms, vaults, security offices and surveillance rooms;

(3) Surveillance procedures, including video recording requirements, as applicable;

(4) Lighting in and around the gambling establishment;

(5) Specific conditions, procedures and instructions for reporting suspected criminal incidents or activity to state and local law enforcement agencies;

(6) Procedures for securing or protecting persons, property, assets and records.

(b) No later than December 1, 2011, each gambling establishment in Tier III through and including V, as provided in subsection (b) of Section 12380, shall develop and implement a security and surveillance plan for the gambling establishment that, in addition to the requirements of subsection (a), includes, but is not limited to, provisions for the following:

(1) A listing of the names and job titles of the employees who are responsible for making decisions that involve the security of patrons, patrons' property, employees,

employees' property, and the gambling establishment's property, cash or equivalent assets and records;

(2) The presence and duties of uniformed security personnel;

(3) Surveillance procedures, including video recording and monitoring requirements, as applicable;

(4) Specific conditions, procedures and instructions for stopping controlled gambling and gaming activities; and

(5) Specific employee training schedules that relate to the gambling establishment's security and surveillance plan.

(c) (1) Each security and surveillance plan shall identify and comply with all state and local requirements and shall implement all applicable provisions of Article 3 of this chapter. Each licensee shall submit, pursuant to paragraph (2), (3), or (4), as an attachment to its security and surveillance plan, copies of identified, applicable local ordinances and any locally-issued certificate of compliance with those ordinances.

(2) Each applicant as an owner-licensee under Chapter 6 of this Division shall submit to the Bureau one copy of a current security and surveillance plan, pursuant to this section, together with those application documents required by Section 12342.

(3) Each licensee shall submit to the Bureau one copy of its current security and surveillance plan with the first biennial license renewal application that is submitted eighteen months after the effective date of this section, and with every second renewal application submitted thereafter.

(4) If a licensee's security and surveillance plan is revised as a result of the addition of permanent tables, or as a result of any change to the physical premises which alters the locations or configurations of any restricted areas of the gambling establishment, or which alters or affects any security of surveillance capabilities or procedures, the licensee shall submit one copy of its revised security and surveillance plan with the first biennial license renewal application submitted immediately following any revision to its security and surveillance plan, and, paragraph (3) notwithstanding, with every second renewal application submitted thereafter.

(5) If the responsible local authority provides reviews of security or surveillance plans, the licensee shall send documentation to the areas reviewed by the responsible local authority and whether or not the responsible local authority approved those areas of the security and surveillance plan under the responsible local authority's jurisdiction.

(d) The Bureau shall review the licensee's security and

surveillance plan, including those provisions under the responsible local authority's jurisdiction, whether reviewed by the local authority or not, and those provisions not under the responsible local authority's jurisdiction. If the Bureau determines that the licensee's security and surveillance plan does not address the elements set forth in this section, then the Bureau may issue a determination identifying the deficiencies and specifying a time certain within which those deficiencies shall be cured.

(e) (1) Each licensee shall, at least annually, provide for a review of the requirements of the security and surveillance plan with those employees that have been assigned duties under the plan, ensuring that each employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This annual review shall be documented, including a signature from each employee indicating that they have participated in the review and a signature from the person who provided the review.

(2) When a new employee begins work, the licensee, or the licensee's designate, shall review the requirements of the security and surveillance plan with the new employee, ensuring that each new employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This initial review shall be documented a provided in paragraph (1).

(f) Failure by a licensee to develop and implement a security and surveillance plan, or to cure a deficiency identified pursuant to subsection (d), constitutes an unsuitable method of operation and also may result in denial of an application for license renewal pursuant to Section 12348, or in the suspension or revocation of its existing license pursuant to Chapter 10 of this division.

(g) In addition to any other remedy under the Act or this division, the Commission may assess a civil penalty of at least $500 but not more than $5,000 for each violation of this section.

19. California Code of Regulations, title 4, section 12385 provides, in part:

(a) The policies and procedures for all Tiers shall meet or exceed the following standards for count room functions:

* * *

(2) The licensee shall designate an individual or individuals, each holding a valid gambling license or work permit, who shall be responsible for performing the drop count. The opening, counting and recording of the contents

of a drop box shall be performed in the presence of and by the designated individual(s).

20. California Code of Regulations, title 4, section 12554 provides, in part:

(a) Upon the filing with the Commission of an accusation by the Bureau recommending revocation, suspension, or other discipline of a holder of a license, registration, permit, finding of suitability, or approval, the Commission shall proceed under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

* * *

(d) Upon a finding of a violation of the Act, any regulations adopted pursuant thereto, any law related to gambling or gambling establishments, violation of a previously imposed disciplinary or license condition, or laws whose violation is materially related to suitability for a license, registration, permit, or approval, the Commission may do any one or more of the following:

(1) Revoke the license, registration, permit, finding of suitability, or approval;

(2) Suspend the license, registration, or permit;

* * *

(5) Impose any fine or monetary penalty consistent with Business and Professions Code sections 19930, subdivision (c), and 19943, subdivision (b)

21. California Code of Regulations, title 4, section 12568 provides, in part:

(c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:

* * *

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

operation, including those set forth in Business and Professions code sections 19857, 19858, or 19880, as applicable . . .

22. Penal Code section 330 provides:

> Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

23. Penal Code section 330.11 provides:

> "Banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and 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. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

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In the Matter of the First Amended Accusation and Statement of Issues Against: **MICHAEL A. WHITELEY, JR. (GEOW-002034), sole proprietor, doing business as: MIKE'S CARD CASINO (GEGE-000811);** **824 North Yosemite Avenue** **Oakdale, California 95361** **Respondent.**	**OAH No. 2016070163** **BGC Case No.** BGC- HQ2016-00001AC **FIRST AMENDED ACCUSATION AND STATEMENT OF ISSUES**

Complainant alleges as follows:

PARTIES

1. Wayne J. Quint, Jr. (Complainant) brings this First Amended Accusation and Statement of Issues solely in his official capacity as the Chief of the California Department of Justice, Bureau of Gambling Control (Bureau).

2. Respondent Michael A. Whitley, Jr. (Respondent) is the sole proprietor of Mike's Card Casino, a licensed gambling establishment, located at 824 North Yosemite Avenue

in Oakdale, California. Respondent's Owner's Gambling License number is GEOW-002034. Mike's Card Casino's License number is GEGE-000811.

3. On July 7, 2016, subsequent to the filing of the Accusation in this matter, the California Gambling Control Commission (Commission), at a properly noticed, regular Commission meeting, considered the Respondent's application to renew his and the Mike's Card Casino's licenses, which will expire on July 31, 2016.[1] The Commission voted to refer the issue of Respondent's suitability for re-licensure to a hearing to be consolidated with the hearing on the already-filed Accusation.[2]

SUMMARY OF THE CASE

4. This proceeding seeks to deny Respondent's application to renew his owner's license and consequently also his gambling establishment's license, as well as revoke those licenses. Additionally, Complainant seeks the imposition of appropriate fines, penalties and costs as allowed by law. Respondent is not suitable for continued licensure under the Gambling Control Act (Act). As alleged in this First Amended Accusation and Statement of Issues, Respondent conducted illegal house-banked card games in the gambling establishment; allowed an unlicensed person to unlawfully conduct and bank games in the gambling establishment; allowed his father, an unlicensed person, to exercise management and control of the gambling establishment's operation; failed to maintain the required surveillance system at the gambling establishment; and failed to protect the integrity of the drop count. As a consequence of this conduct, Respondent has demonstrated that he is unqualified for, disqualified from, and unsuitable for, continued licensure. Respondent's continued licensure is inimical to the public health, safety, and welfare; and a threat to the effective regulation of controlled gambling.

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[1] Unless the Commission determines otherwise, when a licensee submits an application to renew his or her owner's license and the Commission grants that application, the renewal of the owner's license shall effectuate the renewal of every other license endorsed thereon. (Bus. & Prof. Code, § 19876, subd. (d).)

[2] The Commission also issued Respondent an interim renewal license, which is valid through July 31, 2018, or the final conclusion of the proceedings in this matter. (Cal. Code. Regs., tit. 4, § 12035, subd. (b)(2).) The interim renewal license allows Respondent to continue to operate Mike's Card Casino while this matter is pending.

(Bus. & Prof. Code, §§ 19801, subds. (d) & (g), & 19823, subd. (a).)[3]

JURISDICTION AND COST RECOVERY

5. The California Gambling Control Commission (Commission) has jurisdiction over the operation and concentration of gambling establishments and all persons and things having to do with the operation of gambling establishments. (Bus. & Prof. Code, § 19811, subd. (b).) Operating a gambling establishment in California is a revocable privilege. (Bus. & Prof. Code, § 19801, subd. (k).) The Act tasks the Bureau with, among other responsibilities, investigating suspected violations of the Act and initiating disciplinary actions. (Bus. & Prof. Code, §§ 19826, subds. (c) & (e), & 19930, subd. (b).) Upon the Bureau filing an accusation, the Commission proceeds under Government Code section 11500 et seq. (Bus. & Prof Code, § 19930, subd. (b); see Cal. Code Regs., tit. 4, § 12554, subd. (a).) The Commission's disciplinary powers include, among other things, revocation and the imposition of a fine, a monetary penalty and costs. (Cal. Code Regs., tit. 4, § 12554, subd. (d).)

6. In a matter involving revocation or suspension the Bureau may recover its costs of investigation and the costs of prosecuting the case. (Bus. & Prof. Code, § 19930, subd. (d).)

BURDEN OF PROOF

7. The burden of proving his qualifications to receive any license, including the renewal of his license, is on Respondent. (Bus. & Prof. Code, §§ 19856, subd. (a) & 19876, subd. (a).) The burden of proving that the licenses should be revoked is on the Complainant.

FIRST CAUSE OF ACTION

(Unlawful House-Banked Games)

8. Respondent's licenses are subject to denial and/or revocation because from in or about January 2015, until in or about May 2015, the exact dates of which are presently unknown, Respondent dealt, played, carried on, caused to be played and/or offered for play

[3] The statutes and regulations applicable to this Accusation are quoted in pertinent part in Appendix A.

house-banked card games in violation of Penal Code section 330.[4] (Bus. & Prof. Code, § 19857, subds. (a) & (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); and Pen. Code, §§ 330 & 330.11.)

SECOND CAUSE OF ACTION

(Unlawful Banked Games)

9. Respondent's licenses are subject to denial and/or revocation because from in or about May 2015, until in or about February 2016, the exact dates of which are presently unknown, Respondent allowed and aided Joe Chavez, an unlicensed person, to deal, play, carry on, cause to be played and/or offer for play banked card games in violation of Penal Code sections 330 and 330.11. (Bus. & Prof. Code, §§ 19857, subds. (a) & (b), 19920, 19922 & 19984; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

THIRD CAUSE OF ACTION

(Unqualified for Licensure)

10. Respondent's licenses are subject to denial and/or revocation in that, in addition to the conduct set forth in paragraphs 8 and 9, and incorporated herein by reference, Respondent has demonstrated an unwillingness or inability to comply with the Act, and the regulations promulgated thereunder, in that:

a. From on or about February 3, 2016, and for a presently unknown period of time before and after, Respondent failed to maintain in operation a mandatory surveillance system. (Cal. Code. Regs., tit. 4, § 12372.)

b. From on or about March 25, 2015, and for a presently unknown period of time before and after, Respondent unlawfully employed Michael A. Whiteley, Sr., his father, in a key employee position. At that time, Michael A. Whiteley, Sr., did not hold a valid key employee

[4] A "banking game" is one in which the player-dealer position does not "continuously and systematically" rotate. (Pen. Code, § 330.11.) "In a banking game the banker . . . pays all the winnings and suffers all the losses; he is the one against the many, which is the supreme test of a banking game." (*People v. Ambrose* (1953) 122 Cal.App.2dSupp. 966, 970.) The banker "has a direct interest in the outcome of the game, because the amount of money [he] will have to pay out depends upon whether each of the individual bets is won or lost." (*Western Telcon, Inc. v. Cal. State Lottery* (1996) 13 Cal.4th 475, 488.) A "house-banked game" is one in which the gambling establishment (house) is the banker.

license. (Bus. & Prof. Code, §§ 19805, subd. (x), & 19850.)

c. On or about April 2, 2016, unlawfully allowed Holley Wheeler to conduct the count of the drop.[5] At that time, Holly Wheeler was neither licensed by the Commission nor did she hold a valid work permit. (Cal. Code. Regs., tit. 4, § 12385, subd. (a)(2).) (Bus. & Prof. Code, §§ 19857, subds. (a) & (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

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 to renew California State Gambling License number GEOW-002034, issued to Michael A. Whiteley, Jr., the sole proprietor of Mike's Card Casino, a licensed gambling establishment;

2. Denying Respondent's application to renew California State Gambling License number GEGE-00081, issued to Mike's Card Casino, a licensed gambling establishment;

3. Revoking California State Gambling License number GEOW-002034, issued to Michael A. Whiteley, Jr., the sole proprietor of Mike's Card Casino, a licensed gambling establishment;

4. Revoking California State Gambling License number GEGE-00081, issued to Mike's Card Casino, a licensed gambling establishment;

5. Fining and/or imposing a penalty on Michael A. Whiteley, Jr., according to proof and to the appropriate extent allowed by law;

6. Awarding Complainant the costs of investigation and costs of bringing this Accusation before the Commission, including attorneys fees, pursuant to Business and Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and

[5] "Drop" means the total amount of compensation collected from patrons of a gambling establishment to play in controlled games. (Cal. Code. Regs., tit. 4, § 12400, subd. (b)(3).)

7. Taking such other and further action as the Commission may deem appropriate.

Dated: July 14, 2016

WAYNE J. QUINT, JR., Chief
Bureau of Gambling Control
California Department of Justice

APPENDIX A – STATUTORY AND REGULATORY PROVISIONS

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

(d) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

* * *

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

* * *

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

2. 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, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the department for reasons consistent with the policies of this chapter.

3. Business and Professions Code section 19811 provides, in part:

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

4. Business and Professions Code section 19823 provides, in part:

(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.

5. Business and Professions Code section 19826 provides, in part:

The department[6] . . . shall have all of the following responsibilities:

* * *

(c) To investigate suspected violations of this chapter or laws of this state relating to gambling . . . .

* * *

(e) To initiate, where appropriate, disciplinary actions as provided in this chapter. In connection with any disciplinary action, the department may seek restriction, limitation, suspension, or revocation of any license or approval, or the imposition of any fine upon any person licensed or approved.

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

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

> Every person . . . 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 . . . . In any criminal prosecution for violation of this section, the punishment shall be as provided in Section 337j of the Penal Code.

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

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

8. 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, 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.

9. Business and Professions Code section 19876 provides, in part:

> (a) Subject to the power of the commission to deny, revoke, suspend, condition, or limit any license, as provided in this chapter, a license shall be renewed biennially.
>
> * * *
>
> (d) Unless the commission determines otherwise, renewal of an owner's gambling license shall be deemed to effectuate the renewal of every other gambling license endorsed thereon.

10. Business and Professions Code section 19920 provides:

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

11. Business and Professions Code section 19922 provides:

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

12. Business and Professions Code section 19930 provides, in part:

> (b) If, after any investigation, the department is satisfied that a license, permit, finding of suitability, or approval should be suspended or revoked, it shall file an accusation with the commission in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
>
> * * *
>
> (d) In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the department the reasonable costs of the investigation and prosecution of the case.
>
> (1) The costs assessed pursuant to this subdivision shall be fixed by the administrative law judge and may not be increased by the commission. When the commission does not adopt a proposed decision and remands the case to the administrative law judge, the administrative law judge may not increase the amount of any costs assessed in the proposed decision.
>
> (2) The department may enforce the order for payment in the superior court in the county in which the administrative hearing was held. The right of enforcement shall be in addition to

any other rights that the division may have as to any licensee to pay costs.

(3) In any judicial action for the recovery of costs, proof of the commission's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

13. Business and Professions Code section 19984 provides:

Notwithstanding any other law, a licensed gambling enterprise may contract with a third party for the purpose of providing proposition player services at a gambling establishment subject to the following conditions:

(a) Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance by the department, and in no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services at gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess, and the department may collect, reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

(c) The department, pursuant to regulations of the commission, is empowered to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating third-party providers of proposition player services, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight. The department may adopt emergency regulations in order to implement this subdivision.

(d) No agreement or contract between a licensed gambling enterprise and a third party concerning the provision of proposition player services shall be invalidated or prohibited by the department pursuant to this section until the commission establishes criteria for, and makes determinations regarding the licensure or registration of, the provision of these services pursuant to subdivision (b).

14. California Code of Regulations, title 4, section 12035 provides, in part:

(b) The following conditions shall apply to all interim renewal licenses issued under subsection (a):

* * *

(2) An interim license shall be valid for a period of two years from the date the previous license expires, or until a decision is final under Section 12066, whichever is earlier, and is not subject to renewal. The Commission may issue additional interim renewal licenses if the hearing process has not been, or will not be, concluded by the expiration date of the current interim renewal license.

15. California Code of Regulations, title 4, section 12372 provides:

(a) No later than December 1, 2011, each gambling establishment in Tier I and Tier II, as provided in subsection (b) of Section 12380, shall develop and implement a written security and surveillance plan for the gambling establishment that includes, but is not limited to, provisions for the following:

(1) Close monitoring and control of all controlled gambling and gaming activity;

(2) Close monitoring and control of access to restricted areas of the gambling establishment that include, but are not limited to, cages, count rooms, vaults, security offices and surveillance rooms;

(3) Surveillance procedures, including video recording requirements, as applicable;

(4) Lighting in and around the gambling establishment;

(5) Specific conditions, procedures and instructions for reporting suspected criminal incidents or activity to state and local law enforcement agencies;

(6) Procedures for securing or protecting persons, property, assets and records.

(b) No later than December 1, 2011, each gambling establishment in Tier III through and including V, as provided in subsection (b) of Section 12380, shall develop and implement a security and surveillance plan for the gambling establishment that, in addition to the requirements of subsection (a), includes, but is not limited to, provisions for the following:

(1) A listing of the names and job titles of the employees who are responsible for making decisions that involve the security of patrons, patrons' property, employees, employees' property, and the gambling establishment's property, cash or equivalent assets and records;

(2) The presence and duties of uniformed security personnel;

(3) Surveillance procedures, including video recording and monitoring requirements, as applicable;

(4) Specific conditions, procedures and instructions for stopping controlled gambling and gaming activities; and

(5) Specific employee training schedules that relate to the gambling establishment's security and surveillance plan.

(c) (1) Each security and surveillance plan shall identify and comply with all state and local requirements and shall implement all applicable provisions of Article 3 of this chapter. Each licensee shall submit, pursuant to paragraph (2), (3), or (4), as an attachment to its security and surveillance plan, copies of identified, applicable local ordinances and any locally-issued certificate of compliance with those ordinances.

(2) Each applicant as an owner-licensee under Chapter 6 of this Division shall submit to the Bureau one copy of a current security and surveillance plan, pursuant to this section, together with those application documents required by Section 12342.

(3) Each licensee shall submit to the Bureau one copy of its current security and surveillance plan with the first biennial license renewal application that is submitted eighteen months after the effective date of this section, and with every second renewal application submitted thereafter.

(4) If a licensee's security and surveillance plan is revised as a result of the addition of permanent tables, or as a result of any change to the physical premises which alters the locations or configurations of any restricted areas of the gambling establishment, or which alters or affects any security of surveillance capabilities or procedures, the licensee shall submit one copy of its revised security and surveillance plan with the first biennial license renewal application submitted immediately following any revision to its security and

surveillance plan, and, paragraph (3) notwithstanding, with every second renewal application submitted thereafter.

(5) If the responsible local authority provides reviews of security or surveillance plans, the licensee shall send documentation to the areas reviewed by the responsible local authority and whether or not the responsible local authority approved those areas of the security and surveillance plan under the responsible local authority's jurisdiction.

(d) The Bureau shall review the licensee's security and surveillance plan, including those provisions under the responsible local authority's jurisdiction, whether reviewed by the local authority or not, and those provisions not under the responsible local authority's jurisdiction. If the Bureau determines that the licensee's security and surveillance plan does not address the elements set forth in this section, then the Bureau may issue a determination identifying the deficiencies and specifying a time certain within which those deficiencies shall be cured.

(e) (1) Each licensee shall, at least annually, provide for a review of the requirements of the security and surveillance plan with those employees that have been assigned duties under the plan, ensuring that each employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This annual review shall be documented, including a signature from each employee indicating that they have participated in the review and a signature from the person who provided the review.

(2) When a new employee begins work, the licensee, or the licensee's designate, shall review the requirements of the security and surveillance plan with the new employee, ensuring that each new employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This initial review shall be documented a provided in paragraph (1).

(f) Failure by a licensee to develop and implement a security and surveillance plan, or to cure a deficiency identified pursuant to subsection (d), constitutes an unsuitable method of operation and also may result in denial of an application for license renewal pursuant to Section 12348, or in the suspension or revocation of its existing license pursuant to Chapter 10 of this division.

(g) In addition to any other remedy under the Act or this division, the Commission may assess a civil penalty of at least $500 but not more than $5,000 for each violation of this section.

16. California Code of Regulations, title 4, section 12385 provides, in part:

> (a) The policies and procedures for all Tiers shall meet or exceed the following standards for count room functions:
>
> * * *
>
> (2) The licensee shall designate an individual or individuals, each holding a valid gambling license or work permit, who shall be responsible for performing the drop count. The opening, counting and recording of the contents of a drop box shall be performed in the presence of and by the designated individual(s).

17. California Code of Regulations, title 4, section 12554 provides, in part:

> (a) Upon the filing with the Commission of an accusation by the Bureau recommending revocation, suspension, or other discipline of a holder of a license, registration, permit, finding of suitability, or approval, the Commission shall proceed under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
>
> * * *
>
> (d) Upon a finding of a violation of the Act, any regulations adopted pursuant thereto, any law related to gambling or gambling establishments, violation of a previously imposed disciplinary or license condition, or laws whose violation is materially related to suitability for a license, registration, permit, or approval, the Commission may do any one or more of the following:
>
> (1) Revoke the license, registration, permit, finding of suitability, or approval;
>
> (2) Suspend the license, registration, or permit;
>
> * * *
>
> (5) Impose any fine or monetary penalty consistent with Business and Professions Code sections 19930, subdivision (c), and 19943, subdivision (b)

18. California Code of Regulations, title 4, section 12568 provides, in part:

> (c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:
>
> * * *
>
> (3) If the Commission finds the holder no longer meets any criteria for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions code sections 19857, 19858, or 19880, as applicable . . .

19. Penal Code section 330 provides:

> Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

20. Penal Code section 330.11 provides:

> "Banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and 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. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

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CALIFORNIA GAMBLING CONTROL COMMISSION
2016 MAY 24 PM 1:45

BEFORE THE

CALIFORNIA GAMBLING CONTROL COMMISSION

STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MICHAEL A. WHITELEY, JR. (GEOW-002034), sole proprietor, doing business as: MIKE'S CARD CASINO (GEGE-000811);** **824 North Yosemite Avenue** **Oakdale, California 95361** **Respondent.**	**OAH No.** _____ **BGC Case No.** BGC- HQ2016-00001AC **ACCUSATION**

Complainant alleges as follows:

PARTIES

1. Wayne J. Quint, Jr. (Complainant) brings this Accusation solely in his official capacity as the Chief of the California Department of Justice, Bureau of Gambling Control (Bureau).

2. Respondent Michael A. Whitley, Jr. (Respondent) is the sole proprietor of Mike's Card Casino, a licensed gambling establishment, located at 824 North Yosemite Avenue

in Oakdale, California. Respondent's Owner's Gambling License number is GEOW-002034. Mike's Card Casino's License number is GEGE-000811. Both Respondent's and Mike's Card Casino's licenses will expire on July 31, 2016, unless extended or renewed.

SUMMARY OF THE CASE

3. This proceeding seeks to revoke Respondent's owner's license and consequently also his gambling establishment's license, as well as impose appropriate fines, penalties and costs as allowed by law. Respondent is not suitable for continued licensure under the Gambling Control Act (Act). As alleged in this Accusation, Respondent conducted illegal house-banked card games in the gambling establishment; allowed an unlicensed person to unlawfully conduct and bank games in the gambling establishment; allowed his father, an unlicensed person, to exercise management and control of the gambling establishment's operation; failed to maintain the required surveillance system at the gambling establishment; and failed to protect the integrity of the drop count. As a consequence of this conduct, Respondent has demonstrated that he is unqualified for, disqualified from, and unsuitable for, continued licensure. Respondent's continued licensure is inimical to the public health, safety, and welfare; and a threat to the effective regulation of controlled gambling. (Bus. & Prof. Code, §§ 19801, subds. (d) & (g), & 19823, subd. (a).)[1]

JURISDICTION AND COST RECOVERY

4. The California Gambling Control Commission (Commission) has jurisdiction over the operation and concentration of gambling establishments and all persons and things having to do with the operation of gambling establishments. (Bus. & Prof. Code, § 19811, subd. (b).) Operating a gambling establishment in California is a revocable privilege. (Bus. & Prof. Code, § 19801, subd. (k).) The Act tasks the Bureau with, among other responsibilities, investigating suspected violations of the Act and initiating disciplinary actions. (Bus. & Prof. Code, §§ 19826, subds. (c) & (e), & 19930, subd. (b).) Upon the Bureau filing an accusation,

[1] The statutes and regulations applicable to this Accusation are quoted in pertinent part in Appendix A.

the Commission proceeds under Government Code section 11500 et seq. (Bus. & Prof Code, § 19930, subd. (b); see Cal. Code Regs., tit. 4, § 12554, subd. (a).) The Commission's disciplinary powers include, among other things, revocation and the imposition of a fine, a monetary penalty and costs. (Cal. Code Regs., tit. 4, § 12554, subd. (d).)

5. In a matter involving revocation or suspension the Bureau may recover its costs of investigation and the costs of prosecuting the case. (Bus. & Prof. Code, § 19930, subd. (d).)

FIRST CAUSE OF ACTION

(Unlawful House-Banked Games)

6. Respondent's licenses are subject to revocation because from in or about January 2015, until in or about May 2015, the exact dates of which are presently unknown, Respondent dealt, played, carried on, caused to be played and/or offered for play house-banked card games in violation of Penal Code section 330.[2] (Bus. & Prof. Code, § 19857, subds. (a) & (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); and Pen. Code, §§ 330 & 330.11.)

SECOND CAUSE OF ACTION

(Unlawful Banked Games)

7. Respondent's licenses are subject to revocation because from in or about May 2015, until in or about February 2016, the exact dates of which are presently unknown, Respondent allowed and aided Joe Chavez, an unlicensed person, to deal, play, carry on, cause to be played and/or offer for play banked card games in violation of Penal Code sections 330 and 330.11. (Bus. & Prof. Code, §§ 19857, subds. (a) & (b), 19920, 19922 & 19984; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

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[2] A "banking game" is one in which the player-dealer position does not "continuously and systematically" rotate. (Cal. Pen. Code, § 330.11.) "In a banking game the banker . . . pays all the winnings and suffers all the losses; he is the one against the many, which is the supreme test of a banking game." (*People v. Ambrose* (1953) 122 Cal.App.2dSupp. 966, 970.) The banker "has a direct interest in the outcome of the game, because the amount of money [he] will have to pay out depends upon whether each of the individual bets is won or lost." (*Western Telcon, Inc. v. Cal. State Lottery* (1996) 13 Cal.4th 475, 488.) A "house-banked game" is one in which the gambling establishment (house) is the banker.

THIRD CAUSE OF ACTION

(Unqualified for Licensure)

8. Respondent's licenses are subject to revocation in that, in addition to the conduct set forth in paragraphs 6 and 7, and incorporated herein by reference, Respondent has demonstrated an unwillingness or inability to comply with the Act, and the regulations promulgated thereunder, in that:

a. From on or about February 3, 2016, and for a presently unknown period of time before and after, Respondent failed to maintain in operation a mandatory surveillance system. (Cal. Code. Regs., tit. 4, § 12372.)

b. From on or about March 25, 2015, and for a presently unknown period of time before and after, Respondent unlawfully employed Michael A. Whiteley, Sr., his father, in a key employee position. At that time, Michael A. Whiteley, Sr., did not hold a valid key employee license. (Bus. & Prof. Code, §§ 19805, subd. (x), & 19850.)

c. On or about April 2, 2016, unlawfully allowed Holley Wheeler to conduct the count of the drop.[3] At that time, Holly Wheeler was neither licensed by the Commission nor did she hold a valid work permit. (Cal. Code. Regs., tit. 4, § 12385, subd. (a)(2).) (Bus. & Prof. Code, §§ 19857, subds. (a) & (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12568, subd. (c)(3); Pen. Code, §§ 330 & 330.11.)

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. Revoking California State Gambling License number GEOW-002034, issued to Michael A. Whiteley, Jr., the sole proprietor of Mike's Card Casino, a licensed gambling establishment;

2. Revoking California State Gambling License number GEGE-00081, issued to Mike's Card Casino, a licensed gambling establishment;

[3] "Drop" means the total amount of compensation collected from patrons of a gambling establishment to play in controlled games. (Cal. Code. Regs., tit. 4, § 12400, subd. (b)(3).)

3. Fining and/or imposing a penalty on Michael A. Whiteley, Jr., according to proof and to the appropriate extent allowed by law;

4. Awarding Complainant the costs of investigation and costs of bringing this Accusation before the Commission, including attorneys fees, pursuant to Business and Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and

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

Dated: May 24, 2016

WAYNE J. QUINT, JR., Chief
Bureau of Gambling Control
California Department of Justice

APPENDIX A – STATUTORY AND REGULATORY PROVISIONS

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

> (d) Unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.
>
> * * *
>
> (g) Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.
>
> * * *
>
> (k) In order to effectuate state policy as declared herein, it is necessary that gambling establishments, activities, and equipment be licensed, that persons participating in those activities be licensed or registered, that certain transactions, events, and processes involving gambling establishments and owners of gambling establishments be subject to prior approval or permission, that unsuitable persons not be permitted to associate with gambling activities or gambling establishments, and that gambling activities take place only in suitable locations. Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder.

2. 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, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the department for reasons consistent with the policies of this chapter.

3. Business and Professions Code section 19811 provides, in part:

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

4. Business and Professions Code section 19823 provides, in part:

(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.

5. Business and Professions Code section 19826 provides, in part:

The department[4] . . . shall have all of the following responsibilities:

* * *

(c) To investigate suspected violations of this chapter or laws of this state relating to gambling . . . .

* * *

(e) To initiate, where appropriate, disciplinary actions as provided in this chapter. In connection with any disciplinary action, the department may seek restriction, limitation, suspension, or revocation of any license or approval, or the imposition of any fine upon any person licensed or approved.

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

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

> Every person . . . 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 . . . . In any criminal prosecution for violation of this section, the punishment shall be as provided in Section 337j of the Penal Code.

7. 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, 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 19920 provides:

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

9. Business and Professions Code section 19922 provides:

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

10. Business and Professions Code section 19930 provides, in part:

> (b) If, after any investigation, the department is satisfied that a license, permit, finding of suitability, or approval should be suspended or revoked, it shall file an accusation with the commission in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
>
> * * *
>
> (d) In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the department the reasonable costs of the investigation and prosecution of the case.
>
> (1) The costs assessed pursuant to this subdivision shall be fixed by the administrative law judge and may not be increased by the commission. When the commission does not adopt a proposed decision and remands the case to the administrative law judge, the administrative law judge may not increase the amount of any costs assessed in the proposed decision.
>
> (2) The department may enforce the order for payment in the superior court in the county in which the administrative hearing was held. The right of enforcement shall be in addition to any other rights that the division may have as to any licensee to pay costs.
>
> (3) In any judicial action for the recovery of costs, proof of the commission's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

11. Business and Professions Code section 19984 provides:

> Notwithstanding any other law, a licensed gambling enterprise may contract with a third party for the purpose of providing proposition player services at a gambling establishment subject to the following conditions:

(a) Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance by the department, and in no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services at gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess, and the department may collect, reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

(c) The department, pursuant to regulations of the commission, is empowered to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating third-party providers of proposition player services, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight. The department may adopt emergency regulations in order to implement this subdivision.

(d) No agreement or contract between a licensed gambling enterprise and a third party concerning the provision of proposition player services shall be invalidated or prohibited by the department pursuant to this section until the commission establishes criteria for, and makes determinations regarding the licensure or registration of, the provision of these services pursuant to subdivision (b).

12. California Code of Regulations, title 4, section 12372 provides:

(a) No later than December 1, 2011, each gambling establishment in Tier I and Tier II, as provided in subsection (b) of Section 12380, shall develop and implement a written security and

surveillance plan for the gambling establishment that includes, but is not limited to, provisions for the following:

(1) Close monitoring and control of all controlled gambling and gaming activity;

(2) Close monitoring and control of access to restricted areas of the gambling establishment that include, but are not limited to, cages, count rooms, vaults, security offices and surveillance rooms;

(3) Surveillance procedures, including video recording requirements, as applicable;

(4) Lighting in and around the gambling establishment;

(5) Specific conditions, procedures and instructions for reporting suspected criminal incidents or activity to state and local law enforcement agencies;

(6) Procedures for securing or protecting persons, property, assets and records.

(b) No later than December 1, 2011, each gambling establishment in Tier III through and including V, as provided in subsection (b) of Section 12380, shall develop and implement a security and surveillance plan for the gambling establishment that, in addition to the requirements of subsection (a), includes, but is not limited to, provisions for the following:

(1) A listing of the names and job titles of the employees who are responsible for making decisions that involve the security of patrons, patrons' property, employees, employees' property, and the gambling establishment's property, cash or equivalent assets and records;

(2) The presence and duties of uniformed security personnel;

(3) Surveillance procedures, including video recording and monitoring requirements, as applicable;

(4) Specific conditions, procedures and instructions for stopping controlled gambling and gaming activities; and

(5) Specific employee training schedules that relate to the gambling establishment's security and surveillance plan.

(c) (1) Each security and surveillance plan shall identify and comply with all state and local requirements and shall implement all applicable provisions of Article 3 of this chapter. Each licensee shall submit, pursuant to paragraph (2), (3), or (4), as an attachment to its security and surveillance plan,

copies of identified, applicable local ordinances and any locally-issued certificate of compliance with those ordinances.

(2) Each applicant as an owner-licensee under Chapter 6 of this Division shall submit to the Bureau one copy of a current security and surveillance plan, pursuant to this section, together with those application documents required by Section 12342.

(3) Each licensee shall submit to the Bureau one copy of its current security and surveillance plan with the first biennial license renewal application that is submitted eighteen months after the effective date of this section, and with every second renewal application submitted thereafter.

(4) If a licensee's security and surveillance plan is revised as a result of the addition of permanent tables, or as a result of any change to the physical premises which alters the locations or configurations of any restricted areas of the gambling establishment, or which alters or affects any security of surveillance capabilities or procedures, the licensee shall submit one copy of its revised security and surveillance plan with the first biennial license renewal application submitted immediately following any revision to its security and surveillance plan, and, paragraph (3) notwithstanding, with every second renewal application submitted thereafter.

(5) If the responsible local authority provides reviews of security or surveillance plans, the licensee shall send documentation to the areas reviewed by the responsible local authority and whether or not the responsible local authority approved those areas of the security and surveillance plan under the responsible local authority's jurisdiction.

(d) The Bureau shall review the licensee's security and surveillance plan, including those provisions under the responsible local authority's jurisdiction, whether reviewed by the local authority or not, and those provisions not under the responsible local authority's jurisdiction. If the Bureau determines that the licensee's security and surveillance plan does not address the elements set forth in this section, then the Bureau may issue a determination identifying the deficiencies and specifying a time certain within which those deficiencies shall be cured.

(e) (1) Each licensee shall, at least annually, provide for a review of the requirements of the security and surveillance plan with those employees that have been assigned duties under the plan, ensuring that each employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This annual review shall be documented, including a signature from each employee indicating that they have participated in the review and a signature from the person who provided the review.

(2) When a new employee begins work, the licensee,

or the licensee's designate, shall review the requirements of the security and surveillance plan with the new employee, ensuring that each new employee has a general understanding of the provisions of the plan applicable to his or her position and understands his or her specific duties under the plan. This initial review shall be documented a provided in paragraph (1).

(f) Failure by a licensee to develop and implement a security and surveillance plan, or to cure a deficiency identified pursuant to subsection (d), constitutes an unsuitable method of operation and also may result in denial of an application for license renewal pursuant to Section 12348, or in the suspension or revocation of its existing license pursuant to Chapter 10 of this division.

(g) In addition to any other remedy under the Act or this division, the Commission may assess a civil penalty of at least $500 but not more than $5,000 for each violation of this section.

13. California Code of Regulations, title 4, section 12385 provides, in part:

(a) The policies and procedures for all Tiers shall meet or exceed the following standards for count room functions:

* * *

(2) The licensee shall designate an individual or individuals, each holding a valid gambling license or work permit, who shall be responsible for performing the drop count. The opening, counting and recording of the contents of a drop box shall be performed in the presence of and by the designated individual(s).

14. California Code of Regulations, title 4, section 12554 provides, in part:

(a) Upon the filing with the Commission of an accusation by the Bureau recommending revocation, suspension, or other discipline of a holder of a license, registration, permit, finding of suitability, or approval, the Commission shall proceed under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

* * *

(d) Upon a finding of a violation of the Act, any regulations adopted pursuant thereto, any law related to gambling or gambling establishments, violation of a previously imposed disciplinary or

license condition, or laws whose violation is materially related to suitability for a license, registration, permit, or approval, the Commission may do any one or more of the following:

(1) Revoke the license, registration, permit, finding of suitability, or approval;

(2) Suspend the license, registration, or permit;

* * *

(5) Impose any fine or monetary penalty consistent with Business and Professions Code sections 19930, subdivision (c), and 19943, subdivision (b)

15. California Code of Regulations, title 4, section 12568 provides, in part:

(c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:

* * *

(3) If the Commission finds the holder no longer meets any criteria for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions code sections 19857, 19858, or 19880, as applicable . . .

16. Penal Code section 330 provides:

Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

17. Penal Code section 330.11 provides:

> "Banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and 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. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.