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

12
13 In the Matter of the Statement of Reasons for
14 Denial of Application for a Third-Party
Proposition Player Services License for:

BGC Case No. BGC-HQ2018-00005SL

CGCC Case No: CGCC-2017-1218-17D

15 **FABIAN SAMUEL TORRES**
16 [REDACTED]

STATEMENT OF REASONS

17
18 **Respondent.**

19
20 Complainant alleges as follows:

21 **PARTIES**

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

25 2. On March 22, 2016, the Bureau received an Application For Third-Party Proposition
26 Player Services License for Supervisor, Player or Other Employee, and a Level I Supplemental
27 Information, both dated March 16, 2016 (collectively, Application), from Fabian Samuel Torres
28 (Respondent), to allow his employment as a third-party proposition player (prop-player) for L. E.

1 Gaming, Inc. (L. E. Gaming), a registered third-party proposition player services provider,
2 registration number TPPP-000118.¹

3 3. Respondent has been employed as a prop-player by L. E. Gaming since April 20,
4 2016. On or about April 20, 2016, the California Gambling Control Commission (Commission)
5 issued Respondent a registration, number TPPL-016816, as a prop-player for this employment.
6 The Respondent's registration currently expires on February 29, 2020.

7 4. On or about October 10, 2017, the Bureau submitted a Third-Party Player
8 Background Investigation Report to the Commission, recommending that Respondent's
9 Application be denied.

10 5. On or about December 18, 2017, the Commission referred the determination of
11 Respondent's suitability to be issued a prop-player's license to an evidentiary hearing, which is to
12 be held pursuant to California Code of Regulations, title 4, section 12060.²

13 6. On December 11, 2017, Respondent submitted a Notice of Defense, dated December
14 2, 2017.

15 **BURDEN OF PROOF**

16 7. Respondent has the burden of proving his qualifications to receive a license.
17 (Bus. & Prof. Code, § 19856, subd. (a).)

18 **FIRST CAUSE FOR DENIAL**

19 **(Conviction of a Crime of Dishonesty or Moral Turpitude)**

20 8. Respondent's Application is subject to denial and his registration subject to
21 revocation or cancellation in that on or about September 5, 2013, Respondent was found guilty,
22 and convicted in the state of Wisconsin, of violating Village of Greendale Ordinance 9.943.50.1,
23

24 _____
25 ¹ Respondent was required to convert his registration to a license and submit an
26 application for such licensure pursuant to California Code of Regulations, title 4, sections
27 12205.1 and 12218, because L. E. Gaming was summoned on January 28, 2015, to submit an
28 application to convert its registration to a license.

² The statutes and regulations applicable to this Statement of Reasons are quoted in
pertinent part in Appendix A.

1 retail theft,³ a misdemeanor crime of dishonesty or moral turpitude, in the case of *People v.*
2 *Fabian Torres* (Wis., Village of Greendale Mun. Ct., 2013, Citation No. 426104332.)

3 9. Respondent's above-noted conviction occurred within the 10-year period immediately
4 prior to the submission of his Application and he has not obtained relief from that conviction
5 pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45, or their Wisconsin equivalents.
6 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b) & 19859, subd. (d) [mandatory denial];
7 Cal. Code. Regs., tit. 4, §§ 12200.18, subds. (a) & (b), 12205 & 12218.11, subds. (c) [mandatory
8 denial], (e) [mandatory denial] & (j) [mandatory denial].)

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Providing False or Misleading Information to the Bureau and Failing to Disclose**
11 **Information to the Bureau)**

12 10. Respondent's Application is subject to denial and his registration subject to
13 revocation or cancellation in that Respondent, under penalty of perjury, affirmatively and falsely
14 stated in his Application the following:

15 a. In response to question (2) in Section 4. Criminal History Information, of the Level 1
16 Supplemental Information portion of the Application, Respondent falsely stated "No" to the
17 question of whether or not he had been convicted of a misdemeanor⁴ in the last 10 years. As
18 alleged in paragraph 8 above, Respondent was convicted in 2013 of a misdemeanor.

19 b. In response to question (4) in Section 4. Criminal History Information, of the Level 1
20 Supplemental Information portion of the Application, Respondent falsely stated "No" to the
21 question of whether or not he had ever engaged in any act involving dishonesty or moral turpitude

22 ³ In California this crime seems analogous to a violation of Penal Code section 459.5,
23 shoplifting, and, given that the value of what Respondent stole was about \$3.25, it would be a
24 petty theft (Pen. Code, §§ 486 & 488), which is punishable by a mandatory fine of not less than
25 fifty dollars (\$50) and not more than one thousand dollars (\$1,000) for each violation, and may
also be punished by imprisonment in the county jail, not exceeding six months, or both a fine and
imprisonment (Pen. Code, § 490.5). Respondent was ordered to pay a fine of \$366 as punishment
for his theft.

26 ⁴ Unless specifically provided elsewhere, a misdemeanor is any crime punishable by a
27 fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not
28 exceeding six months, or both. (Pen. Code, § 19.) As noted above, Respondent was fined \$366
as punishment for his crime.

1 charged or chargeable as a criminal offense. As alleged in paragraph 8 above, Respondent was
2 convicted in 2013 of retail theft, conduct constituting dishonesty or moral turpitude.
3 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19859, subds. (a) & (b) [mandatory
4 denial] & 19866; Cal. Code. Regs., tit. 4, §§ 12200.18, subds. (a), (b) & (f), 12205 & 12218.11,
5 subds. (e) [mandatory denial], (f) [mandatory denial] & (j) [mandatory denial].)

6 **THIRD CAUSE FOR DENIAL**

7 **(Providing False or Misleading Information to the Bureau)**

8 11. Respondent's Application is subject to denial and his registration subject to
9 revocation or cancellation in that Respondent provided false or misleading material information
10 to the Bureau regarding the circumstances that led to his 2013 conviction in Wisconsin for retail
11 theft, which is alleged in paragraph 8 above, as follows:

12 a. Respondent falsely told the Bureau that a younger family member was responsible for
13 the theft. In fact, it was reported that Respondent was seen taking the merchandise (a candy bar),
14 eating the candy bar and leaving the store with the merchandise without paying for it.
15 Respondent told the responding officer that he had a sweet tooth and that his cousin was going to
16 pay for the candy bar.

17 b. Respondent told the Bureau that the reason he did not disclose the 2013 conviction
18 was because he did not remember it, despite the fact that it had occurred less than three years
19 prior to his submitting his Application and the circumstances were such that it would be
20 unforgettable. Respondent was detained, he was transported to the Greendale Police Department
21 where he was fingerprinted, and photographed, and required to post bail before he was released.
22 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19859, subds. (a) & (b) [mandatory
23 denial] & 19866; Cal. Code. Regs., tit. 4, §§ 12200.18, subds. (a), (b) & (f), 12205 & 12218.11,
24 subds. (e) [mandatory denial], (f) [mandatory denial] & (j) [mandatory denial].)

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PRAYER

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

1. Denying Respondent's Application for third-party proposition player license;
2. Revoking or Cancelling Respondent's registration, number TPPL-016816; and
3. Taking such other and further action as the Commission may deem appropriate.

Dated: March 7, 2018


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

1 **APPENDIX A**

2 **JURISDICTION**

- 3 1. Business and Professions Code section 19811, subdivision (b), provides:

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

- 7 2. Business and Professions Code, section 19823 provides:

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

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

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

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

- 19 3. Business and Professions Code, section 19824 provides, in part:

20 The commission shall have all powers necessary and proper to
21 enable it fully and effectually to carry out the policies and purposes of
this chapter,⁵ including, without limitation, the power to do all of the
22 following:

23 * * *

24 (b) For any cause deemed reasonable by the commission,
25 deny any application for a license, permit, or approval provided
for in this chapter or regulations adopted pursuant to this chapter,
26 limit, condition, or restrict any license, permit, or approval, or
impose any fine upon any person licensed or approved. The

27 ⁵ Hereinafter, "chapter" refers to Business and Professions Code, division 8, chapter 5,
28 (commencing with section 19800), also known as the Gambling Control Act.

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

6 * * *

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

10 4. Business and Professions Code, section 19853, subdivision (a), provides:

11 The commission, by regulation or order, may require that the
12 following persons register with the commission, apply for a finding of
13 suitability as defined in subdivision (i) of 19805, or apply for a
14 gambling license:

15 * * *

16 (3) Any person who does business on the premises of a
17 licensed gambling establishment.

18 5. Business and Professions Code, section 19870 provides:

19 (a) The commission, after considering the recommendation of
20 the chief⁶ and any other testimony and written comments as may be
21 presented at the meeting, or as may have been submitted in writing to
22 the commission prior to the meeting, may either deny the application
23 or grant a license to an applicant who it determines to be qualified to
24 hold the license.

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

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

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

(e) A decision of the commission denying a license or approval,
or imposing any condition or restriction on the grant of a license or
approval may be reviewed by petition pursuant to Section 1085 of the
Code of Civil Procedure. Section 1094.5 of the Code of Civil
Procedure shall not apply to any judicial proceeding described in the
foregoing sentence, and the court may grant the petition only if the

⁶ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

1 court finds that the action of the commission was arbitrary and
2 capricious, or that the action exceeded the commission's jurisdiction.

3 6. Business and Professions Code, section 19871 provides:

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

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

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

10 (A) To call and examine witnesses.

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

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

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

18 (E) To offer rebuttal evidence.

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

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

(b) Nothing in this section confers upon an applicant a right to
discovery of the department's⁷ investigative reports or to require
disclosure of any document or information the disclosure of which is
otherwise prohibited by any other provision of this chapter.

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

1 7. Business and Professions Code section 19984, subdivision (b), provides, in part:

2 The commission shall establish reasonable criteria for, and
3 require the licensure and registration of, any person or entity that
4 provides proposition player services to gambling establishments
5 pursuant to this section, including owners, supervisors, and
6 players The commission may impose licensing requirements,
7 disclosures, approvals, conditions, or limitations as it deems necessary
8 to protect the integrity of controlled gambling in this state

9 8. California Code of Regulations, title 4, section 12056, subdivision (a) provides, in
10 part:

11 If the Commission elects to hold an evidentiary hearing, the
12 hearing will be conducted as a GCA hearing under Section 12060,
13 unless the Executive Director or the Commission determines the
14 hearing should be conducted as an APA hearing under Section
15 12058

16 9. California Code of Regulations, title 4, section 12060, subdivision (b) provides:

17 When the Commission has elected to hold a GCA hearing, the
18 Executive Director shall give notice to the applicant, pursuant to
19 paragraph (2) subsection (c) of Section 12052, to the Office of the
20 Attorney General, and to the Bureau no later than 60 calendar days in
21 advance of the GCA hearing.

22 10. California Code of Regulations, title 4, section 12200.3, subdivision (g), provides:

23 Registrations, licenses, and badges are specific to the primary
24 owner. Third party proposition player services cannot be provided
25 without first applying for and obtaining a registration, license, or
26 badge.

27 11. California Code of Regulations, title 4, section 12205 provides:

28 (a) Any regular registration issued in accordance with this
chapter^[8] shall be subject to cancellation pursuant to this section. A
registration shall be cancelled if the Commission determines after a
noticed hearing that the registrant is ineligible for registration, has
failed in the application for registration to reveal any fact material to
the holder's qualification for registration, or has supplied information
in the registration application that is untrue or misleading as to a
material fact pertaining to the criteria for issuance of registration.

(b) If the Commission finds that any of the circumstances set
forth in subsection (a) apply, then the Executive Director shall
immediately do all of the following:

⁸ "Chapter" refers to California Code of Regulations, title 4, division 18, chapter 2.1, section 12200 et seq.

1 (1) Provide written notice to the registrant and the Bureau
2 of the cancellation of the registration and the grounds thereof, and
3 provide written notice of the cancellation to the owner, if the
4 registrant is a supervisor, player, or other employee and to any
5 gambling establishment in which the registrant provides
6 proposition player services.

7 (2) Notify the registrant, if an individual, that he or she is
8 required to surrender the registrant's badge to the Commission
9 not more than ten days following the date that the notice of the
10 cancellation was mailed or such greater time as is authorized by
11 the Executive Director.

12 SPECIFIC STATUTORY PROVISIONS

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

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

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

23 (c) In reviewing an application for any license, the commission
24 shall consider whether issuance of the license is inimical to public
25 health, safety, or welfare, and whether issuance of the license will
26 undermine public trust that the gambling operations with respect to
27 which the license would be issued are free from criminal and dishonest
28 elements and would be conducted honestly. (a) The burden of proving
his or her qualifications to receive any license is on the applicant.

13. Business and Professions Code, section 19857 provides:

No gambling license shall be issued unless, based on all of 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.

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

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

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

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

8 (b) Failure of the applicant to provide information,
9 documentation, and assurances required by this chapter or
10 requested by the chief, or failure of the applicant to reveal any
11 fact material to qualification, or the supplying of information that
12 is untrue or misleading as to a material fact pertaining to the
13 qualification criteria.

14 * * *

15 (d) Conviction of the applicant fro any misdemeanor
16 involving dishonesty or moral turpitude within the 10-year
17 period immediately preceding the submission of the application,
18 unless the applicant has been granted relief pursuant to Section
19 1203.4, 1203.4a or 1203.45 of the Penal Code; provided,
20 however, that the granting of relief pursuant to Section 1203.4,
21 1203.4a or 1203.45 of the Penal Code shall not constitute a
22 limitation on the decision of the commission under Section
23 19856 or affect the applicant's burden under Section 19857.

24 15. Business and Professions Code section 19866 provides:

25 An applicant for licensing or for any approval or consent required
26 by this chapter, shall make full and true disclosure of all information
27 to the department and the commission as necessary to carry out the
28 policies of this state relating to licensing, registration, and control of
gambling.

16. California Code of Regulations, title 4, section 12200.18, provides, in part:

The Commission may revoke a registration or license, upon any
of the following grounds, after a hearing conducted pursuant to the
same procedures applicable to the revocation of a gambling
establishment license:

1 (a) The registrant or licensee committed, attempted to
2 commit, or conspired to commit any acts prohibited by the Act⁹
or this chapter.

3 (b) Any act or omission by the registrant that would
4 disqualify the registrant from obtaining registration under this
chapter. Any act or omission by the licensee that would
5 disqualify the licensee from obtaining licensing under this
chapter.

6 * * *

7 (f) The registrant or licensee concealed or refused to
8 disclose any material fact in any inquiry by the Bureau or the
Commission.

9
10 17. California Code of Regulations, title 4, section 12218.11, provides, in part:

11 A requester shall be ineligible for licensing for any of the
12 following causes:

13 * * *

14 (c) The requester has, within the ten (10) year period
15 immediately preceding the submission of the request to convert,
16 been convicted of a misdemeanor . . . dishonesty or moral
17 turpitude unless the applicant has been granted relief pursuant to
Penal Code section 1203.4, 1203.4a or 1203.45, provided,
however, that the granting of relief pursuant to Penal Code
section 1203.4, 1203.4a or 1203.45 shall not constitute a
limitation on the discretion of the Commission.

18 * * *

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

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

23 * * *

24 (j) The applicant is ineligible based on any other provision
25 of law.

26
27
28 ⁹ "Act" refers to the "Gambling Control Act." (Bus. & Prof. Code, § 19800 et seq.)

1 18. Penal Code, section 19, provides:

2 Except in cases where a different punishment is prescribed by any
3 law of this state, every offense declared to be a misdemeanor is
4 punishable by imprisonment in the county jail not exceeding six months,
or by fine not exceeding one thousand dollars (\$1,000), or by both.

5 19. Penal Code, section 459.5, provides:

6 (a) Notwithstanding Section 459, shoplifting is defined as
7 entering a commercial establishment with intent to commit larceny
8 while that establishment is open during regular business hours, where
9 the value of the property that is taken or intended to be taken does not
10 exceed nine hundred fifty dollars (\$950). Any other entry into a
11 commercial establishment with intent to commit larceny is burglary.
12 Shoplifting shall be punished as a misdemeanor, except that a person
13 with one or more prior convictions for an offense specified in clause
(iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section
667 or for an offense requiring registration pursuant to subdivision (c)
of Section 290 may be punished pursuant to subdivision (h) of Section
1170.

14 (b) Any act of shoplifting as defined in subdivision (a) shall be
15 charged as shoplifting. No person who is charged with shoplifting may
also be charged with burglary or theft of the same property.

16 20. Penal Code, section 486, provides:

17 Theft is divided into two degrees, the first of which is termed grand theft; the
18 second, petty theft.

19 21. Penal Code, section 488, provides:

20 Theft in other cases is petty theft.

21 22. Penal Code, section 490.5, provides, in part:

22 (a) Upon a first conviction for petty theft involving merchandise
23 taken from a merchant's premises or a book or other library materials
24 taken from a library facility, a person shall be punished by a mandatory
25 fine of not less than fifty dollars (\$50) and not more than one thousand
26 dollars (\$1,000) for each such violation; and may also be punished by
27 imprisonment in the county jail, not exceeding six months, or both such
28 fine and imprisonment.