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

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

CGCC Case No. CGCC-2018-0111-11C

BGC Case No. BGC-HQ2018-0010SL

16 **DEREK MARTIN GAXIOLA, JR.**
17 

STATEMENT OF REASONS

18
19 **Respondent.**

20
21
22 **PARTIES**

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

26 2. On or about January 24, 2017, the Bureau received an Application for Third-Party
27 Proposition Players Services License for Supervisor, Player or Other Employee, and a Level I
28 Supplemental Information (collectively, Application) from Derek Martin Gaxiola, Jr.

1 (Respondent) to allow his employment as a third-party proposition player for Knighted Ventures,
2 LLC (Knighted), a registered third-party proposition player services provider, registration number
3 TPPP-000109.¹

4 3. Respondent has been employed by Knighted since October 2016. He was issued a
5 third-party proposition player registration, number TPPL-018611, on January 3, 2017.

6 4. On or about September 28, 2017, the Bureau submitted a Third-Party Player
7 Background Investigation Report to the Commission in which it recommended that Respondent's
8 Application be denied.

9 5. On or about January 11, 2018, the Commission referred consideration of
10 Respondent's Application to an evidentiary hearing, which is to be held pursuant to California
11 Code of Regulations, title 4, section 12060.²

12 6. Respondent submitted a Notice of Defense, which is dated February 6, 2018.

13 **BURDEN OF PROOF**

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

16 **FIRST CAUSE FOR DENIAL**

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

18 8. Respondent's Application is subject to denial and his registration subject to
19 revocation or cancellation in that on or about January 24, 2012, Respondent was convicted of
20 violating Penal Code section 594, subdivision (a), vandalism with damages in excess of \$400, a
21 misdemeanor crime of moral turpitude, in the case of *People v. Michael Rizo and Derek M.*
22 *Gaxiola* (Los Angeles Co. Sup. Ct., 2012, No. 2BF00338).

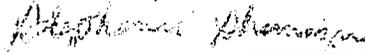
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24
25 ¹ Respondent was required to apply for a license because Knighted was called forward to
26 apply to convert its registration to a license on February 1, 2013. Knighted has yet to be licensed.
Its registration expires on March 31, 2019.

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

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

Dated: September 5, 2018



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

1 individual owner endorsed on the license certificate of the gambling
2 enterprise whether or not the commission takes action against the
license of the gambling enterprise.

3 * * *

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

6
7 4. Business and Professions Code section 19853, subdivision (a), provides:

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

11 * * *

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

13 5. Business and Professions Code section 19870 provides:

14 (a) The commission, after considering the recommendation of
15 the chief⁴¹ and any other testimony and written comments as may be
presented at the meeting, or as may have been submitted in writing to
16 the commission prior to the meeting, may either deny the application
or grant a license to an applicant who it determines to be qualified to
hold the license.

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

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

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

23 (e) A decision of the commission denying a license or approval,
24 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
25 Code of Civil Procedure. Section 1094.5 of the Code of Civil
26 Procedure shall not apply to any judicial proceeding described in the
foregoing sentence, and the court may grant the petition only if the

27
28 ⁴ "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's^[5] 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.

27 ⁵ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.
28 (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
chapter⁶ 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:

⁶ "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:

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
22 ability to participate in, engage in, or be associated with, controlled
23 gambling.

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

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 licensed
2 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 and
7 qualification in accordance with this chapter.

8 * * *

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

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

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

17 (a) The registrant or licensee committed, attempted to commit,
18 or conspired to commit any acts prohibited by the Act⁷ or this
chapter.

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

21
22 16. California Code of Regulations, title 4, section 12218.11, provides, in part:

23 A requester shall be ineligible for licensing for any of the
24 following causes:

25 * * *

26 (c) The requester has, within the ten (10) year period
27 immediately preceding the submission of the request to convert, been
convicted of a misdemeanor . . . dishonesty or moral turpitude unless

28 ⁷ "Act" refers to the "Gambling Control Act." (Bus. & Prof. Code, § 19800 et seq.)

1 the applicant has been granted relief pursuant to Penal Code section
2 1203.4, 1203.4a or 1203.45, provided, however, that the granting of
3 relief pursuant to Penal Code section 1203.4, 1203.4a or 1203.45 shall
4 not constitute a limitation on the discretion of the Commission.

5 * * *

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

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

11 * * *

12 (j) The applicant is ineligible based on any other provision of
13 law.

14 17. Penal Code section 594, subdivision (a) provides:

15 Every person who maliciously commits any of the following acts
16 with respect to any real or personal property not his or her own, in
17 cases other than those specified by state law, is guilty of vandalism:

- 18 (1) Defaces with graffiti or other inscribed material.
- 19 (2) Damages.
- 20 (3) Destroys.

21 Whenever a person violates this subdivision with respect to real
22 property, vehicles, signs, fixtures, furnishings, or property belonging
23 to any public entity, as defined by Section 811.2 of the Government
24 Code, or the federal government, it shall be a permissive inference that
25 the person neither owned the property nor had the permission of the
26 owner to deface, damage, or destroy the property.

27 18. Vehicle Code section 23103, subdivision (a) provides:

28 A person who drives a vehicle upon a highway in willful or wanton
disregard for the safety of persons or property is guilty of reckless
driving.

19. Vehicle Code section 23152, provides, in part:

(a) It is unlawful for a person who is under the influence of any
alcoholic beverage to drive a vehicle.

1 (b) It is unlawful for a person who has 0.08 percent or more, by
2 weight, of alcohol in his or her blood to drive a vehicle. . . .
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