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BEFORE THE

CALIFORNIA GAMBLING CONTROL COMMISSION

STATE OF CALIFORNIA

In the Matter of the Statement of Reasons for Denial of Application for a Third-Party Proposition Player Services License for: **ERNESTO DE JESUS DE LEON, JR.** [redacted] Respondent.	**CGCC Case No: CGCC-2019-0530-10E** **BGC Case No.: BGC-HQ2019-00021SL** **STATEMENT OF REASONS**

Complainant alleges as follows:

PARTIES

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

2. On November 22, 2017, the Bureau received an Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee, and a Level I Supplemental Information form, both dated November 14, 2017 (collectively, Application), from

Ernesto De Jesus De Leon, Jr. (Respondent), to allow for his employment as a third-party proposition player (third-party player) for L.E. Gaming, Inc. (LE Gaming), a registered third-party proposition player services provider, registration number TPPP-000118.[1]

3. Respondent has been employed as a third-party player by LE Gaming from October 2017 to the present. On or about November 7, 2017, the California Gambling Control Commission (Commission) issued Respondent a registration number, TPPL-020575, as a third-party player for this period of employment. Respondent's registration currently expires on November 30, 2019.

4. From October of 1991 to June of 2017, Respondent was employed as a slot attendant by Sycuan Casino Resort located at 5469 Casino Way, El Cajon, California.[2]

5. On or about March 26, 2019, the Bureau submitted a Third-Party Player Initial Background Investigation Report to the Commission, in which it recommended that Respondent's Application be denied.

6. At its May 30, 2019, meeting, the Commission referred consideration of Respondent's Application to an evidentiary hearing, which is to be held pursuant to California Code of Regulations, title 4, section 12060.[3]

7. On or about June 25, 2019, the Bureau received Respondent's Notice of Defense, dated June 25, 2019.

BURDEN OF PROOF

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

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[1] Respondent is required to convert his registration to a license and submit an application for such licensure pursuant to California Code of Regulations, title 4, sections 12205.1 and 12218 because LE Gaming was summoned, on January 28, 2015, to submit an application to convert its registration to a license.

[2] From June of 2017 to October of 2017, Respondent stated that he was unemployed and received financial assistance from his mother.

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

FIRST CAUSE FOR DENIAL

(Lack of Requisite Good Character and Integrity while Employed at Sycuan Casino)

9. Respondent's Application is subject to denial and his registration is subject to revocation or cancellation because Respondent has demonstrated a lack of good character and integrity while employed in a controlled gambling facility. On or about June of 2017, Respondent was fired by Sycuan Casino for cause. He is not eligible for rehire by Sycuan Casino because his termination was involuntary and/or disciplinary.

(Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b); Cal. Code. Regs., tit. 4, §§ 12204, subd. (e) [mandatory denial], 12205 [mandatory denial], 12218.11, subds. (e) & (j).)

SECOND CAUSE FOR DENIAL

(Failure to Disclose Involuntary Termination to the Bureau on the Application)

10. Complainant re-alleges each of the allegations set forth in Paragraphs 1 through 9 above and by this reference incorporates each allegation as if set forth herein in full.

11. Respondent's Application is subject to denial and his registration is subject to revocation or cancellation in that Respondent, under penalty of perjury, in response to question (D), Employment History, of the Level I Supplemental Information, falsely stated he was "laid off" by Sycuan Casino on June 29, 2017. In fact, Sycuan Casino fired him for cause.

(Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19859, subds. (a) [mandatory denial] & (b) [mandatory denial], 19866; Cal. Code. Regs., tit. 4, §§ 12204, subd. (e) [mandatory denial], 12205 [mandatory denial], 12218.11, subds. (e), (f), & (j).)

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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 a third-party proposition player license;
2. Revoking or cancelling Respondent's registration, number TPPL-020575; and
3. Taking such other and further action as the Commission may deem appropriate.

Dated: August 23, 2019

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

APPENDIX A

JURISDICTION

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

> 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 operation of gambling establishments is vested in the commission.

2. Business and Professions Code, section 19823 provides:

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

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

> The commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter,[4] including, without limitation, the power to do all of the following:
>
> * * *
>
> (b) For any cause deemed reasonable by the commission, deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved. The commission may condition, restrict, discipline, or take action against the license of an

[4] "Chapter" refers to Business and Professions Code, division 8, chapter 5, (commencing with section 19800), also known as the Gambling Control Act.

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

* * *

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

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

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

* * *

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

5. Business and Professions Code, section 19870 provides:

(a) The commission, after considering the recommendation of the chief[5] and any other testimony and written comments as may be presented at the meeting, or as may have been submitted in writing to the commission prior to the meeting, may either deny the application or grant a license to an applicant who it determines to be qualified to hold the license.

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

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

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

6. Business and Professions Code, section 19871 provides:

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

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

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

(A) To call and examine witnesses.

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

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

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

(E) To offer rebuttal evidence.

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

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

(b) Nothing in this section confers upon an applicant a right to discovery of the department's[6] investigative reports or to require disclosure of any document or information the disclosure of which is otherwise prohibited by any other provision of this chapter.

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

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

> The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services to gambling establishments pursuant to this section, including owners, supervisors, and players . . . . 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 . . . .

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

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

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

> (a) If the Executive Director determines it is appropriate, he or she may set an application for consideration at a GCA hearing in advance of a meeting pursuant to Section 12054. The Executive Director shall give notice to the applicant, pursuant to paragraph (2) subsection (c) of Section 12052, to the Office of the Attorney General, and to the Bureau no later than 90 calendar days in advance of the GCA hearing. The Executive Director's determination will be based on information contained in the Bureau's report or other appropriate sources including, without limitation, a request from the Bureau or applicant as well as the Commission's operational considerations. The Commission retains the authority to refer the matter to an APA hearing pursuant to subsection (a) of Section 12056 or hear the matter at a Section 12054 meeting if the Commission deems it appropriate.
>
> (b) When the Commission has elected to hold a GCA hearing, the Executive Director shall give notice to the applicant, pursuant to paragraph (2) subsection (c) of Section 12052, to the Office of the Attorney General, and to the Bureau no later than 60 calendar days in advance of the GCA hearing.
>
> (c) The presiding officer shall have no communication with the Commission or Commission staff upon the merits, or upon information or documents related to the application prior to the evidentiary hearing. The Executive Director shall designate a presiding officer which shall be:
>
> (1) A member of the Commission's legal staff; or,

(2) An Administrative Law Judge.

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

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

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

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

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

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

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

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

(A) Evidentiary issues;

(B) Witness and exhibit lists;

(C) Alterations in the Bureau recommendation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any regular registration issued in accordance with this chapter[7] 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:

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

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

12. California Code of Regulations, title 4, section 12205.1, provides:

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

(a) As expeditiously as possible in light of available program resources, the Bureau shall summon persons registered as primary owners, owners, supervisors, players, and other employees for the purpose of applying for licenses under this chapter. The registration of any registrant that fails or refuses to submit the applicable Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433 (Rev. 10/17)) or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434 (Rev. 10/17)), which are hereby incorporated by reference, including any fees to the Bureau within 30 days of receiving a summons shall expire by operation of law on the following day. Prior to and during review of a request to convert a registration to a license, a registration shall remain valid and may be renewed by the registrant as necessary, upon application and approval of renewal of registration as provided in Section 12203A.

(b) Any person who became affiliated with a primary owner following receipt of a summons from the Bureau shall apply for registration pursuant to this chapter and shall be called forward by the Bureau expeditiously.

(c) If the registration expires by operation of law, the former registrant shall submit a new Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433) or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434), which are referenced in subsection (a), and a new nonrefundable application fee as specified in paragraph (1), and the applicable additional fee specified in paragraph (3), (4), or (5) of subsection (d) of Section 12008.

13. California Code of Regulations, title 4, section 12218 provides:

(a) A request to convert a registration to a license shall be submitted to the Bureau only in response to a written summons to a primary owner pursuant to Section 12205.1. Each primary owner's request shall be accompanied by the requests of all affiliated owners, supervisors, players, and other employees.

(b) The request to convert a registration to a license shall designate whether the license is requested as a primary owner, owner, supervisor, player, or other employee. The request shall be signed by the individual requester or, if the requester is a business entity, by the chief executive officer or other designated officer of the business entity.

(c) The request to convert a registration to a license shall include all of the following:

(1) A completed Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433) or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434), referenced in Section 12205.1.

(2) If applicable, the Trust Supplemental Background Investigation Information, BGC-APP-143 (Rev. 05/08), referenced in Section 12342 of this division.

(3) The applicable nonrefundable application fee in the amount specified in subsection (d) of Section 12008.

(4) Two 2x2 inch color passport-style photographs of a requester that is an individual taken no more than one year before submission of the request to the Bureau.

(5) The supplemental information package as defined in Section 12200(b).

(6) A sum of money that, in the judgment of the Chief of the Bureau, will be adequate to pay the anticipated investigation and processing costs, in accordance with Business and Professions Code sections 19867 and 19984(c).

(7) A copy of the summons issued by the Bureau.

(d) Nothing in this chapter shall require the Commission or Bureau to divulge to the requester any confidential information received from any law enforcement agency or any information received from any person with assurances that the information would be maintained as confidential. Nothing in this chapter shall require the Commission or Bureau to divulge any information that might reveal the identity of any source of information or jeopardize the safety of any person.

SPECIFIC STATUTORY PROVISIONS

14. Business and Professions Code section 19856 provides:

(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.

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

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

15. 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.

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

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

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

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

(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.

17. 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.

18. 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:
>
> (a) The registrant or licensee committed, attempted to commit, or conspired to commit any acts prohibited by the Act[8] or this chapter.
>
> (b) Any act or omission by the registrant that would disqualify 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.
>
> * * *
>
> (f) The registrant or licensee concealed or refused to disclose any material fact in any inquiry by the Bureau or the Commission.

19. California Code of Regulations, title 4, section 12218.11, provides, in part:

> A requester shall be ineligible for licensing for any of the following causes:
>
> * * *
>
> (e) The requester has failed to meet the requirements of Business and Professions Code sections 19856 or 19857.
>
> (f) The requester would be ineligible for a state gambling license under any of the criteria set forth in Business and Professions Code section 19859, subdivisions (b), (e), or (f).
>
> * * *
>
> (j) The applicant is ineligible based on any other provision of law.

[8] "Act" refers to the "Gambling Control Act." (Bus. & Prof. Code, § 19800 et seq.)