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**BEFORE THE**

**CALIFORNIA GAMBLING CONTROL COMMISSION**

**In the Matter of the Statement of Issues  
Against:**  
  
**Phetsamone Phaphol,**  
  
**Respondent**

Case No. CGCC # \_\_\_\_\_

**STATEMENT OF ISSUES**

MATHEW J. CAMPOY, Complainant herein, alleges as follows:

**PARTIES**

1. Complainant Mathew J. Campoy brings this Statement of Issues solely in his official capacity as Acting Chief of the Bureau of Gambling Control of the California Department of Justice. At all times relevant hereto the Bureau of Gambling Control was constituted and designated the Division of Gambling Control ("Division"), in which was vested the authority of the Department of Justice to act as hereinafter set forth. At all times relevant hereto, the Chief of the Bureau of Gambling Control was constituted and designated the Director of the Division of Gambling Control ("Director"), in whom was vested the authority to act as herein set forth.

2. Respondent Phetsamone Phaphol ("Respondent") submitted a Tribal Key Employee Application for a Finding of Suitability ("Application") dated February 16, 2005, to

1 work at the Eagle Mountain Casino, a tribal casino operated by the Tule River Indian Tribe, as a  
2 floor person, which was received by the Division on March 8, 2005.

3 **APPLICATION STATUS**

4 3. On or about December 14, 2005, the Division mailed a letter to the director of the  
5 Tribal Gaming Commission for the Tule River Tribal Gaming Agency ("TGA") notifying the  
6 TGA of the Division's intent to recommend denial of Respondent's Application to the  
7 California Gambling Control Commission ("Commission"), and apprising the TGA of its right to  
8 be heard on the matter.

9 4. On or about January 10, 2006, the Division mailed a letter to Respondent  
10 notifying him of the Division's intent to recommend denial of his Application to the  
11 Commission, and apprising him of his right a to pre-denial meeting with the Director prior to  
12 submission of the Division's recommendation to the Commission.

13 5. On or about January 30, 2006, Respondent had a pre-denial meeting with  
14 representatives of the Director regarding the proposed recommendation to deny his Application.

15 6. On or about March 7, 2006, the Division mailed a letter to Respondent apprising  
16 him that the Division had submitted its recommendation to deny his application to the  
17 Commission and setting forth a summary of the Director's final report and recommendation to  
18 the Commission.

19 7. On or about September 21, 2006, the Commission mailed to Respondent a letter  
20 informing Respondent that the Division had recommended to the Commission that Respondent's  
21 application be denied on the ground that within ten years of the application, Respondent had been  
22 convicted of a misdemeanor involving moral turpitude, i.e., a conviction of violation of Penal  
23 Code section 422, threatening crime with intent to terrorize. The letter further informed  
24 Respondent of his right to have a hearing on the matter, and instructed him on how to request a  
25 hearing.

26 8. By letter of September 27, 2006, Respondent timely requested a hearing on the  
27 denial of his application before an administrative law judge or the full Commission. At its  
28 October 5, 2006, meeting, the Commission referred Respondent's appeal to hearing.

**JURISDICTION**

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2           9. This Statement of Issues is brought before the Commission under the authority of  
3 the California Tribal-State class III gaming compacts entered into between the State of California  
4 and various federally-recognized Indian tribes, including the Tule River Indian Tribe, in 1999  
5 ("Compact"), and the authority of the Gambling Control Act, as set forth in paragraphs 10  
6 through 24 below.

7           10. Section 6.4.1 of the Compact states:

8                   Summary of Licensing Principles. All persons in any way  
9                   connected with the Gaming Operation or Facility who are required  
10                   to be licensed or to submit to a background investigation under  
11                   [the Indian Gaming Regulatory Act] IGRA, and any others  
12                   required to be licensed under this Gaming Compact, including but  
13                   not limited to, all Gaming Employees and Gaming Resource  
14                   Suppliers, and any other person having a significant influence over  
15                   the Gaming Operation must be licensed by the Tribal Gaming  
16                   Agency. The parties intend that the licensing process provided for  
17                   in this Gaming Compact shall involve joint cooperation between  
18                   the Tribal Gaming Agency and the State Gaming Agency, as more  
19                   particularly described herein.

20           11. Section 6.4.4, subdivision (a) of the Compact states:

21                   Gaming Employees.

22                   (a) Every Gaming Employee shall obtain, and thereafter  
23                   maintain current, a valid tribal gaming license, which shall be  
24                   subject to biennial renewal; provided that in accordance with  
25                   Section 6.4.9, those persons may be employed on a temporary or  
26                   conditional basis pending completion of the licensing process.

27           12. Section 6.5.6 of the Compact states in pertinent part:

28                   State Certification Process.

                 (a) Upon receipt of a completed license application and a  
determination by the Tribal Gaming Agency that it intends to issue  
the earlier of a temporary or permanent license, the Tribal Gaming  
Agency shall transmit to the State Gaming Agency a notice of  
intent to license the applicant, together all of the following:

\* \* \*

                 (iv) . . . Except for an applicant for licensing as a non-key Gaming  
Employee, as defined by agreement between the Tribal Gaming Agency  
and the State Gaming agency, the Tribal Gaming Agency shall require  
the applicant also to file an application with the State Gaming Agency,  
prior to issuance of a temporary or permanent tribal gaming license, for  
a determination of suitability for licensure under the California  
Gambling Control Act. Investigation and disposition of that application

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shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling establishment subject to that Agency's jurisdiction. . . .

(b) Background Investigation of Applicants. Upon receipt of completed license application information from the Tribal Gaming Agency, the State Gaming Agency may conduct a background investigation pursuant to state law to determine whether the applicant would be suitable to be licensed for association with a gambling establishment subject to the jurisdiction of the State Gaming Agency. . . Upon completion of the necessary background investigation or other verification of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming Agency certifying that the State has determined that the applicant would be suitable, or that the applicant would be unsuitable, for licensure in a gambling establishment subject to the jurisdiction of the State Gaming Agency and, if unsuitable, stating the reasons therefor.

\* \* \*

(d) Prior to denying an application for a determination of suitability, the State Gaming Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity to be heard. If the State Gaming Agency denies an application for a determination of suitability, that Agency shall provide the applicant with written notice of all appeal rights available under state law.

13. Business and Professions Code section 19801, subdivision (h), states:

(h) All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated to protect the public health, safety, and general welfare of the residents of this state as an exercise of the police powers of the state.

14. Business and Professions Code section 19811, states, in relevant part:

(a) There is in state government the California Gambling Control Commission, consisting of five members appointed by the Governor, subject to confirmation by the Senate. . . .

(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.

15. Business and Professions Code section 19823 states, in relevant part:

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

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(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.

(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.

16. Business and Professions Code section 19824 provides as follows:

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, including, without limitation, the power to do all of the following:

(a) Require any person to apply for a license, permit, registration, or approval as specified in this chapter, or regulations adopted pursuant to this chapter.

(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.

(c) Approve or disapprove transactions, events, and processes as provided in this chapter.

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

\* \* \*

(h) Issue subpoenas to compel attendance of witnesses and production of documents and other material things at a meeting or hearing of the commission or its committees, including advisory committees.

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17. Business and Professions Code section 19825 states:

The commission may require that any matter that the commission is authorized or required to consider in a hearing or meeting of an adjudicative nature regarding the denial, suspension, or revocation of a license, permit, or a finding of suitability, be heard and determined in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

18. Business and Professions Code section 19810 states, in relevant part:

There is within the Department of Justice, the Division of Gambling Control as provided in Section 15001 of the Government Code. . . .

19. Business and Professions Code section 19826 states, in relevant part:

The division shall have all of the following responsibilities:

(a) To investigate the qualifications of applicants before any license, permit, or other approval is issued, and to investigate any request to the commission for any approval that may be required pursuant to this chapter. The division may recommend the denial or the limitation, conditioning, or restriction of any license, permit or other approval. . . .

20. Business and Professions Code section 19805, subdivision (g), defines "Director"

as follows:

(g) "Director," when used in connection with a corporation, means any director of a corporation or any person performing similar functions with respect to any organization. In any other case, "director" means the Director of the Division of Gambling Control.

21. Business and Professions Code section 19868 states in pertinent part:

(a) Within a reasonable time after the filing of an application and any supplemental information the division may require, and the deposit of any fee required pursuant to Section 19867, the division shall commence its investigation of the applicant and, for that purpose, may conduct any proceedings it deems necessary

(b) If denial of the application is recommended, the director shall prepare and file with the commission his or her written reasons upon which the recommendation is based.

(1) Prior to filing his or her recommendation with the commission, the director shall meet with the applicant, or the applicant's duly authorized representative, and inform him or her

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generally of the basis for any proposed recommendation that the application be denied, restricted, or conditioned.

(2) Not less than 10 business days prior to the meeting of the commission at which the application is to be considered, the division shall deliver to the applicant a summary of the director's final report and recommendation. . . .

22. Business and Professions Code section 19870, subdivisions (a) through (d), state:

(a) The commission, after considering the recommendation of the director 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 on audiotape or videotape.

23. Business and Professions Code section 19871 states:

(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.

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(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 division's 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.

24. Business and Professions Code section 19825 states:

The commission may require that any matter that the commission is authorized or required to consider in a hearing or meeting of an adjudicative nature regarding the denial, suspension, or revocation of a license, permit, or a finding of suitability, be heard and determined in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**STATUTORY REQUIREMENTS FOR LICENSURE**

25. Business and Professions Code section 19805, subdivision (b), defines an applicant as:

(b) "Applicant" means any person who has applied for, or is about to apply for, a state gambling license, a key employee license, a registration, a finding of suitability, a work permit, a manufacturer's or distributor's license, or an approval of any act or transaction for which the approval or authorization of the commission or division is required or permitted under this chapter.

26. Business and Professions Code section 19805, subdivision (i), states:

(i) "Finding of suitability" means a finding that a person meets the qualification criteria described in subdivisions (a) and (b) of Section 19857, and that the person would not be disqualified from holding a state gambling license on any of the grounds specified in Section 19859.

27. Business and Professions Code section 19805, subdivisions (u) and (v), state:

(u) "Key employee" means any natural person employed in the operation of a gambling enterprise in a supervisory capacity or



1 empowered to make discretionary decisions that regulate gambling  
2 operations, including, without limitation, pit bosses, shift bosses,  
3 credit executives, cashier operations supervisors, gambling  
4 operation managers and assistant managers, managers or  
5 supervisors of security employees, or any other natural person  
6 designated as a key employee by the division for reasons consistent  
7 with the policies of this chapter.

8 (v) "Key employee license" means a state license authorizing  
9 the holder to be associated with a gambling enterprise as a key  
10 employee.

11 28. Business and Professions Code section 19854 states:

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

14 (b) Licenses issued to key employees shall be for specified  
15 positions only; and those positions shall be enumerated in the  
16 endorsement described in subdivision (b) of Section 19851.

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

19 29. Business and Professions Code section 19856 states:

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

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

30. Business and Professions Code section 19857 states:

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.

1 (b) A person whose prior activities, criminal record, if any,  
2 reputation, habits, and associations do not pose a threat to the  
3 public interest of this state, or to the effective regulation and  
4 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.

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

7 31. Business and Professions Code section 19859 states in pertinent part:

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

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

12 \* \* \*

13 (d) Conviction of the applicant for any misdemeanor  
14 involving dishonesty or moral turpitude within the 10-year period  
15 immediately preceding the submission of the application, unless  
16 the applicant has 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 discretion  
of the commission under Section 19856 or affect the applicant's  
burden under Section 19857.

17 **FIRST CAUSE FOR MANDATORY DENIAL OF APPLICATION**

18 **(Conviction Involving Crime of Moral Turpitude)**

19 32. On or about September 25, 2000, Respondent was arrested by the Porterville  
20 Police Department in the County of Tulare, California for violating Penal Code section 422,  
21 threatening a crime with intent to terrorize. Respondent was additionally charged with violating  
22 Penal Code section 273.5, subdivision (a), infliction of corporal injury to a spouse or cohabitant,  
23 in relation to the incident giving rise to his September 25, 2000, arrest.

24 33. On October 12, 2000, in a proceeding entitled *People of the State of California v.*  
25 *Phetsamone Phaphol*, Case Number CR- F-00-0064371-2, in the Porterville Division of the  
26 Superior Court of the County of Tulare, upon a plea of *nolo contendere*, Respondent was  
27 convicted of violating Penal Code section 422, threatening a crime with intent to terrorize.

1 Respondent was sentenced to three years' probation, a fine of \$200, and 90 days in jail. The  
2 sentence was suspended. The charge for violating Penal Code section 273.5, subdivision (a) was  
3 dismissed in the interests of justice.

4 34. Because of Respondent's conviction of violating Penal Code section 422 as set  
5 forth in paragraph 33 above, Respondent's Application is subject to mandatory denial pursuant to  
6 Business and Professions Code section 19859, subdivision (d), for Respondent's conviction of a  
7 misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately  
8 preceding the submission of his application.

9 **SECOND CAUSE FOR MANDATORY DENIAL OF APPLICATION**

10 **(Failure of Applicant to Clearly Establish Eligibility and Qualifications )**

11 35. Complainant hereby incorporates the allegations contained in paragraphs 32  
12 through 34, above, as though set forth herein at length.

13 36. On or about May 26, 1987, Respondent was arrested by the Tulare County  
14 Sheriff's Office for violating Penal Code section 459, burglary, and Penal Code section 496,  
15 receiving known stolen or unknown stolen property. On October 5, 1987, Respondent was  
16 convicted of violating Penal Code section 496, receiving known stolen or unknown stolen  
17 property. Respondent was sentenced to two years' probation, a fine, ten days in jail, and a work  
18 program.

19 37. As set forth in paragraph 33 above, in 2000 Respondent was convicted of  
20 violating Penal Code section 422, threatening a crime with intent to terrorize. According to the  
21 statement of the complaining witness, Respondent Phaphol's live-in girlfriend, contained in the  
22 police report in that case, on or about September 25, 2000, while at their residence, Respondent  
23 Phaphol accused her of "cheating on him" and became angry with her. He pulled her hair, hit her  
24 on the neck, and choked her. Respondent then picked up a large kitchen knife, held it pointed  
25 toward her throat and within several inches, and asked her if she wanted to die. In fear for her  
26 life, the complaining witness got down on her knees and begged Respondent Phaphol to let her  
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1 go. The complaining witness subsequently reported the crime to the Porterville Police  
2 Department.

3 38. Under Business and Professions Code section 19857, subdivision (a), the  
4 qualifications for a gambling license require that an applicant be "[a] person of good character,  
5 honesty, and integrity." Additionally, under section 19857, subdivision (b), the qualifications  
6 require that an applicant be "[a] person whose prior activities, criminal record, if any, reputation,  
7 habits, and associations do not pose a threat to the public interest of this state, or to the effective  
8 regulation and control of controlled gambling, or create or enhance the dangers of unsuitable,  
9 unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the  
10 carrying on of the business and financial arrangements incidental thereto."

11 39. Under Business and Professions Code section 19856, subdivision (a), "[t]he  
12 burden of proving his or her qualifications to receive any license is on the applicant. . . ."

13 40. Based upon Respondent's convictions of violating Penal Code sections 422 and  
14 496, as set forth above, and the circumstances underlying those convictions, Respondent has  
15 failed to "clearly establish" his qualifications for a license as set forth in Business and  
16 Professions Code section 19857, subdivisions (a) and (b), and therefore, Respondent's  
17 Application is subject to mandatory denial pursuant to Business and Professions Code section  
18 19859, subdivision (a).

19 **THIRD CAUSE FOR DENIAL OF APPLICATION**

20 **(Lack of Character, Honesty, Integrity)**

21 41. Complainant hereby incorporates the allegations contained in paragraphs 32  
22 through 40, above, as though set forth herein at length.

23 42. Under Business and Professions Code section 19857, "[n]o gambling license shall  
24 be issued unless, based on all of the information and documents submitted, the commission is  
25 satisfied that the applicant is all of the following:

26 (a) A person of good character, honesty, and integrity."  
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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 the application for a finding of suitability for Respondent Phetsamone Phaphol pursuant to Business and Professions Code section 19859, subdivisions (a) and (d), and section 19857, subdivisions (a) and (b).
2. Taking such and further action as is deemed necessary and proper.

Dated: January 16, 2008

  
\_\_\_\_\_  
MATHEW J. CAMBOY, Acting Chief  
Bureau of Gambling Control  
California Department of Justice  
Complainant