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

13 **In the Matter of the Statement of**
14 **Particulars:**

15 **THOMAS STEPHAN MILLER**
16 

17 **(TRKE #012129)**

18 Applicant.

BGC Case No.: BGC-HQ2014-00001SL

CGCC Case No.: CGCC-2013-1212-18D

STATEMENT OF PARTICULARS

19
20 Complainant alleges as follows:

21 **PARTIES**

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

25 2. On December 11, 2012, the Bureau of Gambling Control (Bureau) received an
26 Application for Finding of Suitability Tribal Key Employee (Application) for a position with the
27
28

1 Chukchansi Coarse Gold Resort and Casino¹ (Picayune Rancheria of Chukchansi Indians of
2 California) from Thomas Stephan Miller (Applicant).

3 3. On December 12, 2013, the California Gambling Control Commission (Commission)
4 considered Respondent's Application, and the Commission referred the matter of Respondent's
5 Application to an evidentiary hearing. The Commission's Executive Director referred the matter
6 to hearing pursuant to former California Code of Regulations (CCR) Title 4, Division 18, Chapter
7 1, section 12050, subdivisions (b)(2).²

8 LICENSURE CONSIDERATIONS

9 (Misdemeanor Criminal Conviction for Crime of Moral Turpitude 10 (Outside of Ten Years) Dismissal under Penal Code Section 1203.4; 11 Work Permit Denial; and Related Disclosure Issues.)

12 4. On February 14, 2005, the Applicant was convicted of violating Penal Code section
13 647, subdivision (a), disorderly conduct: soliciting a lewd act. This is considered to be a crime of
14 moral turpitude. The Applicant plead nolo contendere to this offense stemming from a June 2004
15 arrest by the Hanford Police Department for six counts of violating Penal Code section 288,
16 subdivision (a), lewd and lascivious acts with a child under the age of 14.

17 5. On May 20, 2008 the Applicant applied for relief pursuant Penal Code section
18 1204.3, and his conviction was set aside with a not guilty plea being entered and the case being
19 dismissed.

20 6. In response to a Bureau inquiry regarding his 2005 conviction, the Applicant stated:

21 I took a plea bargain after fighting my case for almost year.
22 [Penal Code section] 647 [subd. (a)] was [a] small fine. A three-
23 year probation with time served and it was expu[ngeable] I had
24 already lost my 70 thousand dollar a year job and lost my entire
family, [and] paid my lawyer thousands of dollars. I wanted the
trial but coun[sel] said if they tried me for a P[enal] C[ode]
[section] 288a the original chargers (sic) was eight charges that
would be 40 years in prison if convicted. Why take a risk like that?

25 ¹ The Chukchansi Coarse Gold Resort and Casino is currently closed for public safety
reasons pursuant to a federal court order.

26 ² The provisions for conducting suitability hearings before the Commission were
27 significantly amended effective January 1, 2015. Accordingly, the hearing before the
28 Commission in this matter is being held under title 4 of the California Code of Regulations,
sections 12060 and 12062.

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JURISDICTION

11. 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.

12. The Tribal-State Compact Between the State of California and Chukchansi Indians, section 6.5.6 at pages 19 to 20, provides, in part:

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 [Commission], the Tribal Gaming Agency shall require the applicant also file an application with the State Gaming Agency . . . for a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application 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.

13. 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 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 of 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.

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

* * *

1 (b) For any cause deemed reasonable by the commission, deny
2 any application for a license, permit, or approval provided for in
3 this chapter or regulations adopted pursuant to this chapter, limit,
4 condition, or restrict any license, permit, or approval, or impose any
5 fine upon any person licensed or approved. The commission may
6 condition, restrict, discipline, or take action against the license of an
7 individual owner endorsed on the license certificate of the gambling
8 enterprise whether or not the commission takes action against the
9 license of the gambling enterprise.

10 * * *

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

14 15. Business and Professions Code section 19870 provides:

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

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

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

27 (d) All proceedings at a meeting of the commission relating to a
28 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.

16. 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.

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

2 (A) To call and examine witnesses.

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

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

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

10 (E) To offer rebuttal evidence.

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

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

22 (b) Nothing in this section confers upon an applicant a right to
23 discovery of the department's^[3] investigative reports or to require
24 disclosure of any document or information the disclosure of which
25 is otherwise prohibited by any other provision of this chapter.

26 SPECIFIC STATUTORY AND REGULATORY PROVISIONS

27 17. Business and Professions Code section 19856, subdivision (a) provides in part: "The
28 burden of proving his or her qualifications to receive any license is on the applicant."

18 18. Business and Professions Code section 19805, subdivision (j), provides:

19 "Finding of Suitability" means a finding that a person meets the
20 qualification criteria described in subdivisions (a) and (b) of Section
21 19857, and that the person would not be disqualified from holding a
22 state gambling license on any of the grounds specified in Section
23 19859.

24 19. Business and Professions Code section 19857 provides in part:

25 No gambling license shall be issued unless, based on all the

26 ³ "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus.
27 & Prof. Code, § 19805, subd. (h).)
28

1 information and documents submitted, the commission is satisfied
2 that the applicant is all of the following:

3 (a) A person of good character, honesty and integrity.

4 (b) A person whose prior activities, criminal record, if any,
5 reputation, habits, and associations do not pose a threat to the public
6 interest of this state, or to the effective regulation and control of
7 controlled gambling, or create or enhance the dangers of unsuitable,
8 unfair, or illegal practices, methods, and activities in the conduct of
9 controlled gambling or in the carrying on of the business and
10 financial arrangements incidental thereto.

11 20. Business and Professions Code section 19859 provides in part:

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

14 * * *

15 (b) Failure of the applicant to provide information,
16 documentation, and assurances required by this chapter or requested
17 by the chief, or failure of the applicant to reveal any fact material to
18 qualification, or the supplying of information that is untrue or
19 misleading as to a material fact pertaining to the qualification
20 criteria.

21 * * *

22 (d) Conviction of the applicant for any misdemeanor involving
23 dishonesty or moral turpitude within the 10-year period
24 immediately preceding the submission of the application, unless the
25 applicant has been granted relief pursuant to Section 1203.4,
26 1203.4a, or 1203.45 of the Penal Code; provided, however, that the
27 granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45
28 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.

21 21. Penal Code section 647, states in pertinent part:

22 Except as provided in subdivision (l), every person who commits
23 any of the following acts is guilty of disorderly conduct, a
misdemeanor:

24 (a) Who solicits anyone to engage in or who engages in lewd or
25 dissolute conduct in any public place or in any place open to the
26 public or exposed to public view.

27 22. Penal Code section 288, states in pertinent part:

28 (a) Except as provided in subdivision (i), any person who
willfully and lewdly commits any lewd or lascivious act, including
any of the acts constituting other crimes provided for in Part 1,

1 upon or with the body, or any part or member thereof, of a child
2 who is under the age of 14 years, with the intent of arousing,
3 appealing to, or gratifying the lust, passions, or sexual desires of
4 that person or the child, is guilty of a felony and shall be punished
5 by imprisonment in the state prison for three, six, or eight years.

6 **BUREAU RECOMMENDATION**

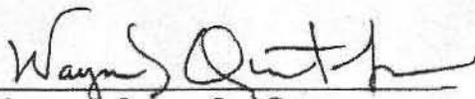
7 23. On August 5, 2012, issued its "Tribal Key Employee Background Investigation
8 Report" stating:

9 Mr. Miller was convicted of a misdemeanor crime involving
10 moral turpitude within the specified 10-year period; however, the
11 conviction was later set aside and dismissed pursuant to PC section
12 1203.4, rendering it a discretionary basis for denial of his
13 application under Business and Professions Code section 19859,
14 subdivision (d). Mr. Miller also failed to disclose to the Bureau that
15 1) he applied for, and was denied, a work permit; 2) he had been
16 terminated from a tribal casino; and 3) his gaming license at that
17 casino had been revoked. These factors raise question as to Mr.
18 Miller's character and his overall suitability for tribal licensure;
19 however, it is the Bureau's position that they do not rise to the level
20 necessary to support a recommendation of denial of his application.

21 **CONCLUSION**

22 WHEREFORE, Bureau Chief Wayne J. Quint, Jr., consistent with the Bureau's
23 recommendation regarding the Applicant, recommends that the Applicant be found suitable for a
24 key employee license.

25 Dated: ~~June~~ ^{July 9TH} __, 2015

26 
27 WAYNE J. QUINT, JR., CHIEF
28 Bureau of Gambling Control
California Department of Justice
Complainant