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

13  
14 In the Matter of the Application for a Finding  
of Suitability for:

CGCC Case No. CGCC-2017-1005-10D

BGC Case No. BGC-HQ2017-0022SL

15  
16 **JOSHUA METCALFE**



17 **STATEMENT OF PARTICULARS**

18  
19 **Applicant.**

20  
21 **PARTIES**

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

25 2. On July 31, 2015, the Bureau received an Application for Finding of Suitability  
26 Tribal Key Employee for Joshua Ryan Metcalfe (Applicant) dated July 13, 2015, a Tribal Key  
27 Employee Supplemental Background Investigation Information dated July 13, 2015, and a second  
28 Application for Finding of Suitability Tribal Key Employee dated January 12, 2016, (collectively,

1 Application),<sup>1</sup> to allow him employment as a Tribal Key Employee for the Tule River Indian  
2 Tribe (Tribe).<sup>2</sup>

3 3. Applicant was hired by the Tribe in February 2007, as a card dealer. In October  
4 2010; Applicant was promoted to floor person. In May 2011, Applicant was promoted to pit  
5 boss, a key employee position. At that time, Applicant submitted an application for Finding of  
6 Suitability as a tribal key employee. Thereafter, on May 12, 2012, the Bureau sent him a pre-  
7 denial notification letter, advising him that the Bureau was recommending that his 2011  
8 application be denied because in 2009 he was convicted of a crime of moral turpitude. In  
9 response, Applicant abandoned his application and he was removed from his key employee  
10 position. Subsequently, in September 2012, Applicant had his misdemeanor moral turpitude  
11 conviction expunged pursuant to Penal Code, section 1203.4, and was apparently placed back by  
12 the Tribe in a key employee position. Since September 2012, Applicant has been employed by  
13 the Tribe as a pit boss, a key employee position. The Tribe explained that it conducted an audit  
14 and found that a new key employee application had not been submitted for Applicant, so  
15 Applicant did so in July 2015.

16 4. On or about July 2017, the Bureau submitted a Tribal Key Employee Background  
17 Investigation Report, recommending that Applicant be found suitable to be licensed as a key  
18 employee.

19 5. On or about October 5, 2017, the Commission referred the determination of  
20 Applicant's suitability to be issued a finding of suitability to an evidentiary hearing, which is to  
21 be held pursuant to California Code of Regulations, title 4, section 12060.<sup>3</sup>

22 <sup>1</sup> While the July 13, 2015 application was pending, Applicant's Tule River Tribe Gaming  
23 Commission was renewed and the tribal license expiration date changed.

24 <sup>2</sup> Applicant was granted a key employee license by the Tule River Tribe Gaming  
25 Commission on September 28, 2012. The California Gambling Control Commission does not  
26 issue a license to Applicant; but rather, makes a finding of suitability because this gaming facility  
27 is owned and operated by the Tribe pursuant to a tribal-state compact. (2000 Tribal-State  
28 Compact Between the State of California and the Tule River Indian Tribe, a federally-recognized  
Indian tribe, pp. 19-21, § 6.5.6; 2017 Tribal-State Compact Between the State of California and  
the Tule River Indian Tribe of California, pp. 52-55, § 6.5.6.)

<sup>3</sup> The statutes and regulations applicable to this Statement of Particulars are quoted in  
(continued...)

1 6. Applicant submitted a Notice of Defense, which is dated October 24, 2017.

2 **BURDEN OF PROOF**

3 7. Applicant has the burden of proving his qualifications to receive a license.  
4 (Bus. & Prof. Code, § 19856, subd. (a).)

5 **LICENSURE CONSIDERATIONS**

6 **(Factors in Aggravation and Mitigation)**

7 8. On or about May 12, 2006, Applicant was convicted of violating Vehicle Code  
8 sections 23152, subdivision (a), driving under the influence of alcohol, 23152, subdivision (b),  
9 blood alcohol level greater than .08, and 12500, subdivision (a), driving without a license, all  
10 misdemeanors, in the case of *People v. Joshua Metcalfe* (Super. Ct. Tulare County, 2006, No.  
11 PCM155640).

12 9. Applicant disclosed two of the above-noted 2006 convictions on his Application.  
13 However, he omitted information related to his conviction for driving without a license. When  
14 asked about this omission he stated that he did not know he had that conviction.

15 10. On or about July 21, 2009, Applicant was convicted of violating Vehicle Code  
16 section 20002, subdivision (a), hit and run-property damage, a misdemeanor and crime of moral  
17 turpitude, in the case of *People v. Joshua Metcalfe* (Super. Ct. Tulare County, 2009, No.  
18 PCM223977). On September 17, 2012, Applicant successfully petitioned the court to have this  
19 conviction dismissed pursuant to Penal Code section 1203.4

20 11. Applicant initially denied to the police that he had been driving the vehicle that was  
21 involved in the 2009 hit-and-run conviction alleged above. He also told the police that he was  
22 elsewhere when the hit-and-run occurred. After further investigation by the police, Applicant  
23 admitted that he was the driver of the vehicle and had left the scene of the accident. Both  
24 Applicant's roommate, whose vehicle Applicant crashed, and Applicant's father, separately filed  
25 a police report claiming the vehicle had been stolen.

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27 \_\_\_\_\_  
28 (...continued)  
pertinent part in Appendix A.

1 12. Applicant's 2006 and 2009 misdemeanor convictions were unrelated to his  
2 employment at the tribal casino or to controlled gambling. There was no actual or potential harm  
3 to any patron in a gambling establishment.

4 13. Applicant neither attempted to, nor did, realize any advantage, economic or  
5 otherwise, from the conduct that led to his misdemeanor convictions.

6 14. Applicant has been cooperative throughout the application process.

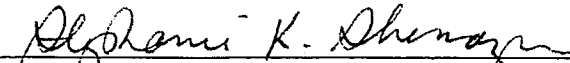
7 15. Applicant has been employed in tribal gaming since 2007, both as a key employee  
8 and non-key employee. There have been no employment-related problems reported to the Bureau  
9 for that employment.

10 16. The Bureau is unaware of any facts or circumstances that would indicate that  
11 Applicant currently poses a threat to either the safety of the gambling public or the integrity of the  
12 controlled gambling industry. While the Bureau recognizes that Applicant's criminal history, and  
13 particularly the criminal history related to the hit-and-run event, is not admirable, the Bureau  
14 believes that his age at the time of the convictions, his efforts to expunge his record and move on  
15 from his bad conduct, and the lack of complaints from the Tribe regarding his employment weigh  
16 in his favor.

17 **CONCLUSION**

18 WHEREFORE, Director Shimazu requests that following the hearing to be held on the  
19 matters herein alleged, the Commission take such action as it may deem appropriate.

20  
21  
22 Dated: May 7, 2018

23   
24 STEPHANIE K. SHIMAZU, DIRECTOR  
25 Bureau of Gambling Control  
26 California Department of Justice  
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**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,<sup>[4]</sup> 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 individual owner endorsed on the license certificate of the gambling

<sup>4</sup> Hereinafter, "chapter" refers to Business and Professions Code, division 8, chapter 5, (commencing with section 19800), also known as the Gambling Control Act.

1 enterprise whether or not the commission takes action against the  
2 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  
6 associated with controlled gambling activities.

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  
10 suitability as defined in subdivision (i) of 19805, or apply for a  
11 gambling license:

12 \* \* \*

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

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

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

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

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

28 (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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<sup>5</sup> "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

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

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

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

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

7 (A) To call and examine witnesses.

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

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

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

15 (E) To offer rebuttal evidence.

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

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

27 (b) Nothing in this section confers upon an applicant a right to  
28 discovery of the department's<sup>6</sup> 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.

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

31 If the Commission elects to hold an evidentiary hearing, the  
32 hearing will be conducted as a GCA hearing under Section 12060,  
33 unless the Executive Director or the Commission determines the  
34 hearing should be conducted as an APA hearing under Section

35 <sup>6</sup> "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.  
36 (h).)

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

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.

9. 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.

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

(a) Any regular registration issued in accordance with this chapter<sup>7</sup> 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.

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<sup>7</sup> "Chapter" refers to California Code of Regulations, title 4, division 18, chapter 2.1, section 12200 et seq.



1 **SPECIFIC STATUTORY PROVISIONS**

2 11. Business and Professions Code, section 19854 provides, in part:

3 (a) Every key employee shall apply for and obtain a key  
4 employee license.

5 (b) No person may be issued a key employee license unless the  
6 person would qualify for a state gambling license.

7 12. Business and Professions Code, section 19855 provides:

8 Except as otherwise provided by statute or regulation, every  
9 person who, by statute or regulation, is required to hold a state license  
10 shall obtain the license prior to engaging in the activity or occupying  
11 the position with respect to which the license is required. Every person  
12 who, by order of the commission, is required to apply for a gambling  
13 license or a finding of suitability shall file the application within 45  
14 calendar days after receipt of the order.

15 13. Business and Professions Code, section 19856 provides:

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

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

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

31 14. Business and Professions Code, section 19857 provides:

32 No gambling license shall be issued unless, based on all of the  
33 information and documents submitted, the commission is satisfied that  
34 the applicant is all of the following:

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

36 (b) A person whose prior activities, criminal record, if any,  
37 reputation, habits, and associations do not pose a threat to the public  
38 interest of this state, or to the effective regulation and control of  
39 controlled gambling, or create or enhance the dangers of unsuitable,  
40 unfair, or illegal practices, methods, and activities in the conduct of

1 controlled gambling or in the carrying on of the business and financial  
2 arrangements incidental thereto.

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

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

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

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

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

16 \* \* \*

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

26 16. Business and Professions Code section 19866 provides:

27 An applicant for licensing or for any approval or consent  
28 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.

17. The 2017 Tribal-State Compact Between the State of California and the Tule River  
Indian Tribe of California, § 6.5.6 provides in part:

(a) With respect to Applicants for licensing for a position  
identified on the Compact Key Employee Position List, the Applicant  
shall also file an application with the State Gaming Agency, prior to  
the Tribal Gaming Agency's issuance of a tribal gaming license, for a  
determination of suitability for licensure under the California

1 Gambling Control Act; provided that in accordance with section 6.4.9,  
2 those persons may be employed on a temporary or conditional basis  
pending completion of the licensing process.

3 \* \* \*

4 (d) Investigation and disposition of applications for a  
5 determination of suitability shall be governed entirely by State law,  
6 and the State Gaming Agency shall determine whether the Applicant  
7 would be found suitable for licensure in a gambling establishment  
8 subject to the State Gaming Agency's jurisdiction. Additional  
information may be required by the State Gaming Agency to assist it  
in its background investigation, to the extent permitted under State law  
for licensure in a gambling establishment subject to the State Gaming  
Agency's jurisdiction.

9 (e) The Tribal Gaming Agency shall require a licensee to  
10 apply for renewal of a determination of suitability by the State Gaming  
11 Agency at such time as the licensee applies for renewal of a tribal  
gaming license.

12 (f) Upon receipt of completed license or license renewal  
13 application information from the Tribal Gaming Agency, the State  
14 Gaming Agency may conduct a background investigation pursuant to  
15 state law to determine whether the Applicant is suitable to be licensed  
16 for association with Class III Gaming operations. While the Tribal  
17 Gaming Agency shall ordinarily be the primary source of application  
18 information, the State Gaming Agency is authorized to directly seek  
19 application information from the Applicant. The Tribal Gaming  
20 Agency shall provide to the State Gaming Agency summary reports,  
21 including any derogatory information, of the background  
22 investigations conducted by the Tribal Gaming Agency and the NIGC,  
23 and written statements by the Applicant, and related applications, if  
24 any, for Gaming Employees, Gaming Resource Suppliers, and  
25 Financial Sources. If further investigation is required to supplement  
the investigation conducted by the Tribal Gaming Agency, the  
Applicant will be required to pay the application fee charged by the  
State Gaming Agency pursuant to California Business and Professions  
Code section 19951, subdivision (a), but any deposit requested by the  
State Gaming Agency pursuant to section 19867 of that Code shall  
take into account reports of the background investigation already 54  
conducted by the Tribal Gaming Agency and the NIGC, if any. Failure  
to provide information reasonably required by the State Gaming  
Agency to complete its investigation under State law or failure to pay  
the application fee or deposit can constitute grounds for denial of the  
application by the State Gaming Agency. The State Gaming Agency  
and Tribal Gaming Agency shall cooperate in sharing as much  
background information as possible, both to maximize investigative  
efficiency and thoroughness, and to minimize investigative costs.

26 (g) Upon completion of the necessary background  
27 investigation or other verification of suitability, the State Gaming  
28 Agency shall issue a notice to the Tribal Gaming Agency certifying  
that the State has determined that the Applicant is suitable, or that the

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Applicant is unsuitable, for licensure in a Gaming Operation and, if unsuitable, stating the reasons therefore. Issuance of a determination of suitability does not preclude the State Gaming Agency from a subsequent determination based on newly discovered information that a person or entity is unsuitable for the purpose for which the person or entity is licensed. Upon receipt of notice that the State Gaming Agency has determined that a person or entity is or would be unsuitable for licensure, the Tribal Gaming Agency shall deny that person or entity a license and promptly, and in no event more than thirty (30) days from the issuance of the State Gaming Agency notification, revoke any tribal gaming license that has theretofore been issued to that person or entity; provided that the Tribal Gaming Agency may, in its discretion, reissue a tribal gaming license to the person or entity following entry of a final judgment reversing the determination of the State Gaming Agency in a proceeding in state court between the Applicant and the State Gaming Agency conducted pursuant to section 1085 of the California Code of Civil Procedure.