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

15 In the Matter of the Statement of Reasons for
16 Denial of Renewal Application for a Tribal
17 Key Employee License Regarding:

18 **JARMAINE AQUINO PASCUA**
19 

20 **Respondent.**

CGCC Case No.: GCADS-TRKE-017878

BGC Case No.: BGC-HQ2020-00024SL

STATEMENT OF REASONS

21
22 Complainant alleges as follows:

23 **PARTIES**

24 1. Stephanie K. Shimazu (Complainant) brings this Statement of Reasons for Denial of
25 Renewal Application for a Tribal Key Employee License solely in her official capacity as the
26 Director of the California Department of Justice, Bureau of Gambling Control (Bureau).

27 2. On May 22, 2019, the Bureau received a Renewal Application for Finding of
28 Suitability Tribal Key Employee (Application), dated April 30, 2019, submitted by Jarmaine

1 Aquino Pascua (Respondent), to hold a key employee position at Pala Casino Spa and Resort,
2 which is owned and operated by the Pala Band of Mission Indians (Tribe).¹

3 3. Respondent's Tribal Key Employee license will expire on June 4, 2021, unless the
4 Tribal Gaming Agency issues a renewal license to Respondent on or before that date.

5 4. On or about July 31, 2020, the Bureau issued its Tribal Key Employee Renewal
6 Background Investigation Report in which it recommended that Respondent's Application be
7 denied.

8 5. On or about August 24, 2020, the Commission notified Respondent of the Executive
9 Director's decision to refer the matter to an evidentiary hearing pursuant to California Code of
10 Regulations, title 4, section 12060, subdivision (a).² Included with that written notice was a
11 Notice of Defense form for Respondent to complete and return.

12 6. On or about September 3, 2020, Respondent submitted his completed Notice of
13 Defense form.

14 **BURDEN OF PROOF**

15 7. Respondent has the burden of proving he is qualified to be found suitable for
16 licensure. (Bus. & Prof. Code, § 19856, subd. (a).)

17 **FIRST CAUSE FOR DENIAL**

18 **(Misdemeanor Crime of Moral Turpitude – Mandatory Denial)**

19 8. Respondent's Application is subject to denial because on or about January 31, 2018,
20 Respondent was convicted, upon a plea of guilty, of violating Penal Code section 273.5,
21 subdivision (a), inflicting corporal injury on a spouse or cohabitant, a misdemeanor crime of
22 moral turpitude, in the case of *People of the State of California v. Jarmaine Aquino Pascua*

23 ¹ At the time of his Application, Respondent was employed as a Table Games
24 Dealer/Dual Rate Floor Person at the Pala Casino Spa Resort in San Diego, California. Because
25 this gambling establishment is owned and operated by the Pala Band of Mission Indians pursuant
26 to a tribal-state compact, Respondent's tribal key employee license, TRKE-017878, was issued by
27 the Pala Gaming Commission (the Tribal Gaming Agency). Accordingly, under these
28 circumstances, the Commission is required to make a Finding of Suitability "for licensure under
the California Gambling Control Act." (Tribal-State Compact Between the State of California
and the Pala Band of Mission Indians, § 6.5.6.)

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

1 (Super. Ct. Riverside County, 2018, Case No. SWM1800074). Respondent was sentenced to
2 complete a domestic violence program, serve 10 days in a sheriff's work program, perform 20
3 hours of community service, three years of probation, and to pay a fine and restitution.
4 Respondent has completed the domestic violence treatment program, the sheriff's work program,
5 community service, and paid his fine and restitution in full. Respondent's conviction occurred
6 within the 10-year period immediately preceding the submission of his Application and he has not
7 obtained relief from this conviction pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.
8 (Bus. & Prof. Code, §§ 19857, subs. (a) & (b), 19859, subd. (d) [mandatory denial].)

9 **SECOND CAUSE FOR DENIAL**

10 **(Providing Untrue or Misleading Information – Mandatory or Discretionary Denial)**

11 9. Respondent's Application is subject to denial because he provided untrue or
12 misleading information to the Bureau about his 2018 conviction for violating Penal Code Section
13 273.5, inflicting corporal injury on a spouse or cohabitant. When asked by the Bureau to provide
14 information concerning circumstances that led to his conviction, Respondent provided
15 information in conflict with the court and police records.

16 (Bus. & Prof. Code, §§ 19857, subs. (a) & (b), 19859, subd. (b) [mandatory denial].)

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Commission issue a decision:

- 20 1. Denying Respondent's Renewal Application for a Tribal Key Employee; and
21 2. Taking such other and further action as the Commission may deem appropriate.
22

23 Dated: January 20, 2021

24 Stephanie Shimazu Digitally signed by Stephanie Shimazu
Date: 2021.01.20 08:56:19 -08'00'

25 STEPHANIE K. SHIMAZU, DIRECTOR
26 Bureau of Gambling Control
27 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 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.

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, 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

1 fine upon any person licensed or approved. The commission may
2 condition, restrict, discipline, or take action against the license of an
3 individual owner endorsed on the license certificate of the gambling
4 enterprise whether or not the commission takes action against the
5 license of the gambling enterprise.

6 * * *

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

10 4. Business and Professions Code section 19854, subdivisions (a) and (b) provide:

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

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

15 5. Business and Professions Code section 19870 provides:

16 (a) The commission, after considering the recommendation of
17 the chief 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

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

3 6. Business and Professions Code section 19871 provides:

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

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

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

10 (A) To call and examine witnesses.

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

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

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

18 (E) To offer rebuttal evidence.

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

22 (4) The meeting need not be conducted according to
23 technical rules relating to evidence and witnesses. Any relevant
24 evidence may be considered, and is sufficient in itself to support
25 a finding, if it is the sort of evidence on which responsible
26 persons are accustomed to rely in the conduct of serious affairs,
27 regardless of the existence of any common law or statutory rule
28 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^[3] 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.

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

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SPECIFIC STATUTORY AND REGULATORY PROVISIONS

7. Business and Professions Code section 19856, subdivision (a) provides in part:

The burden of proving his or her qualifications to receive any license is on the applicant.

8. Business and Professions Code section 19857 provides in part:

No gambling license shall be issued unless, based on all 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.

9. 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 the 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 to a material fact pertaining to the qualification criteria.

* * *

(d) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless 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.

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10. 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.

11. California Code of Regulations, title 4, section 12054, subdivision (a), provides:

(a) At a non-evidentiary hearing meeting, the Commission may take, but is not limited to taking, one of the following actions:

(1) Issue a license, temporary license, interim license, registration, permit, finding of suitability, renewal or other approval.

(2) Elect to hold an evidentiary hearing in accordance with Section 12056 and, when for a renewal application, issue an interim renewal license pursuant to Section 12035. The Commission shall identify those issues for which it requires additional information or consideration related to the applicant's suitability.

(3) Table or continue an item for consideration at a subsequent meeting, for any purpose, including obtaining new or additional information from the applicant, Bureau or Commission staff, provided however in the case of renewals, the Commission must act on the application before the license expires.

(4) Extend a license for up to 180 calendar days as necessary, as provided in Business and Professions Code section 19876, subdivision (c).

(5) Approve or deny a request for withdrawal pursuant to Section 12015.

(6) Make a finding of abandonment pursuant to subsection (c) of Section 12017.

(7) If the Bureau has filed an accusatory pleading with the Commission pursuant to Business and Professions Code section 19930 prior to Commission action on a renewal application, the Commission shall issue an interim renewal license pursuant to Section 12035.

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

2 (a) If the Executive Director determines it is appropriate, he or
3 she may set an application for consideration at a GCA hearing in
4 advance of a meeting pursuant to Section 12054. The Executive
5 Director shall give notice to the applicant, pursuant to paragraph (2)
6 subsection (c) of Section 12052, to the Office of the Attorney General,
7 and to the Bureau no later than 90 calendar days in advance of the
8 GCA hearing. The Executive Director's determination will be based
9 on information contained in the Bureau's report or other appropriate
10 sources including, without limitation, a request from the Bureau or
11 applicant as well as the Commission's operational considerations. The
12 Commission retains the authority to refer the matter to an APA
13 hearing pursuant to subsection (a) of Section 12056 or hear the matter
14 at a Section 12054 meeting if the Commission deems it appropriate.

15 (b) When the Commission has elected to hold a GCA hearing,
16 the Executive Director shall give notice to the applicant, pursuant to
17 paragraph (2) subsection (c) of Section 12052, to the Office of the
18 Attorney General, and to the Bureau no later than 60 calendar days in
19 advance of the GCA hearing.

20 (c) The presiding officer shall have no communication with
21 the Commission or Commission staff upon the merits, or upon
22 information or documents related to the application prior to the
23 evidentiary hearing. The Executive Director shall designate a
24 presiding officer which shall be:

- 25 (1) A member of the Commission's legal staff; or,
- 26 (2) An Administrative Law Judge.

27 (d) The applicant or the complainant, or the applicant and the
28 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

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(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 prehearing order if appropriate or requested by either party. The prehearing 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

1 filed one with the Commission according to Business and Professions
2 Code section 19868, to enable the Commission to make an informed
3 decision on whether the applicant has met his, her, or its burden of
4 proof. The complainant may but is not required to recommend or seek
any particular outcome during the evidentiary hearing, unless it so
chooses.

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

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

9 (k) Except as otherwise provided in subsection (g), the
10 complainant and applicant shall have the right to call and examine
11 witnesses under oath; to introduce relevant exhibits and documentary
12 evidence; to cross-examine opposing witnesses on any relevant matter,
13 even if the matter was not covered in direct examination; to impeach
14 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.

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

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

20 13. California Code of Regulations, title 4, section 12346, subdivisions
21 (a)(1) and (b)(3), provide:

22 (a) An application for a gambling license shall be denied by
23 the Commission if any of the following apply:

24 (1) The Commission finds that the applicant is
25 ineligible, unqualified, disqualified, or unsuitable pursuant to the
26 criteria set forth in the Act or other applicable law or that granting the
license would be inimical to public health, safety, welfare, or would
27 undermine the public trust that gambling operations are free from
28 criminal or dishonest elements.

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(b) An application for a gambling license may be denied if:

(3) The Commission finds that the applicant's past behavior calls into question the applicant's qualification requirements and considerations outlined in Business and Professions Code section 19856.

14. California Code of Regulations, title 4, section 12354, subdivision (e)(5), provides:

(e) With ten day's advance written notice to the interim key employee and to the gambling enterprise, the Executive Director shall cancel the interim key employee license based upon the following.

(5) A Bureau recommendation of denial of the applicant's key employee application.

15. California Code of Regulations, title 4, § 12355, subds. (a) and (b), provide:

(a) An application for a portable personal key employee license shall be denied by the Commission if any of the following applies:

(1) The Commission finds that the applicant is ineligible, unqualified, disqualified, or unsuitable pursuant to the criteria set forth in the Act or other applicable law or that granting the license would be inimical to public health, safety, welfare, or would undermine the public trust that gambling operations are free from criminal or dishonest elements.

(b) An application for a key employee license may be denied if:

(2) The Commission finds that the applicant's past behavior calls into question the applicant's qualification requirements and considerations outlined in Business and Professions Code section 19856.