1 **BEFORE THE** 2 CALIFORNIA GAMBLING CONTROL COMMISSION 3 In the Matter of the Application for Approval CGCC Case No. CGCC-2022-0310-5Aii 4 of Third-Party Proposition Player Services Employee Type License Regarding: BGC Case No. BGC-HQ2022-00005SL 5 **DECISION AND ORDER** JESSE DUNNING 6 7 Hearing Date: March 30, 2023 10:00 a.m. Time: 8 Respondent. 9 This matter was heard by the California Gambling Control Commission (Commission) 10 pursuant to Business and Professions Code sections 19870 and 19871, and title 4, California Code 11 of Regulations (CCR) section 12060, via Zoom video conference, on March 30, 2023. 12 Respondent Jesse Dunning (Dunning) did not attend the evidentiary hearing. 13 James Waian, Deputy Attorney General, State of California (DAG Waian), represented 14 complainant Yolanda Morrow, Director of the Bureau of Gambling Control (Bureau), Department 15 of Justice, State of California. 16 During the evidentiary hearing, Presiding Officer Paras Modha (PO Modha), Attorney III 17 of the Commission, took official notice of the following documents: the Commission's Notice 18 and Agenda of Commission Hearing; the Commission's Conclusion of Prehearing Conference 19 letter; the Commission's Notice of Hearing with attachments (A) Dunning's Application for 20 Third-Party Proposition Player Services Employee Type License, and (B) the Bureau's 21 Background Investigation Report; the Bureau's Statement of Reasons; and Dunning's signed 22 Notice of Defense form. 23 During the evidentiary hearing, PO Modha accepted into evidence Exhibits 1-10, Bates 24 Nos. BGC 001-111, offered by the Bureau and identified on the Bureau's Exhibit Index, without 25 objection from Dunning. PO Modha also accepted into evidence Exhibit 11, Notification of 26 Employee Separation from Knighted Ventures, LLC, without objection from Dunning¹. 27 /// 28 ¹ Exhibit 11 was not included in the Bureau's Exhibit Index and does not contain bates numbering.

FINDINGS OF FACT

Procedural History

- 1. In May 2011, Dunning started working as a third-party worker for Knighted Ventures, LLC (Knighted), a third-party provider of proposition player services.
- 2. On or about June 7, 2021, the Bureau received an Initial Application for Third-Party Proposition Player Services Employee Type License and Supplemental Information form (Supplemental) (collectively, Application) from Dunning to work as a third-party worker for Knighted.
- 3. On or about June 18, 2021, the Commission issued third-party proposition player services worker temporary license number TPWK-001366 to Dunning for his continued employment as a third-party worker for Knighted.
- 4. On or about January 10, 2022, the Commission received a Level III Third-Party Worker Initial Background Investigation Report (Background Report) on Dunning from the Bureau. In the Background Report, the Bureau states that Dunning failed to disclose two misdemeanor convictions on his Application. Based on the foregoing, the Bureau recommends that the Commission deny Dunning's Application.
- 5. On or about March 10, 2022, the Commission voted to refer the consideration of Dunning's Application to a Gambling Control Act (Act) evidentiary hearing pursuant to CCR sections 12054(a)(4) and 12060(a).
- 6. On or about March 11, 2022, the Commission sent a letter to Dunning, via certified and regular mail, notifying him that the Commission referred the consideration of his Application to an evidentiary hearing and included a blank Notice of Defense form.
- 7. On or about March 28, 2022, the Bureau received a signed Notice of Defense form from Dunning requesting an evidentiary hearing on the consideration of his Application.
- 8. On or about August 23, 2022, the Commission sent a Notice of Hearing, via e-mail, to Dunning and Deputy Attorney General Ronald Giusso. The prehearing conference was set for February 15, 2023 at 10:00 a.m. and the evidentiary hearing was set for March 30, 2023 at 10:00 a.m.

- 9. On or about February 15, 2023, the noticed Prehearing Conference was held before PO Modha. Dunning did not attend the prehearing conference and no one attended on Dunning's behalf. DAG Waian attended on behalf of the Bureau.
- 10. On or about February 15, 2023, the Commission sent a Conclusion of Prehearing Conference letter, via e-mail and regular mail to Dunning, and via e-mail to DAG Waian.
- 11. On or about February 24, 2023, the Bureau sent a Statement of Reasons to Dunning, via e-mail and overnight courier, and to the Commission. In the Statement of Reasons, the Bureau alleges the following two causes for denial of Dunning's Application: (1) Dunning engaged in illegal behavior, demonstrating a willingness to violate the law and a conscious disregard for the health, safety, and welfare of others based on his misdemeanor convictions for disorderly conduct under the influence of drugs and reckless driving; and (2) Dunning failed to disclose his two misdemeanor convictions on his Application. Based on the foregoing, the Bureau requests that the Commission deny Dunning's Application.
- 12. The Commission heard this matter via Zoom video conference on March 30, 2023. PO Modha closed the administrative record and the matter was submitted for decision on March 30, 2023.

Dunning Failed to Attend the Evidentiary Hearing

13. Dunning failed to attend this evidentiary hearing despite submitting a Notice of Defense form requesting an evidentiary hearing on the consideration of his Application.

Additionally, Dunning did not submit any information or evidence in support of his Application during the evidentiary hearing.

Dunning's Employment History in Controlled Gambling

14. Dunning worked as a third-party worker for Knighted from approximately May 26, 2021 to May 13, 2022. According to a Notification of Employee Separation form, Dunning was discharged from employment by Knighted due to "misconduct."

Dunning's Criminal History

15. On or about January 11, 2010, Dunning was convicted by the Alameda County Superior Court of violating Penal Code section 647(f), disorderly conduct under the influence of

drugs, a misdemeanor, in the case *People v. Dunning*, Case Number 423596. Dunning was sentenced to 15 days in jail and three years of probation, and ordered to pay a fine.

16. On or about February 26, 2018, Dunning was convicted by the Contra Costa County Superior Court of violating Vehicle Code section 23103, reckless driving, a misdemeanor, in the case *People v. Dunning*, Case Number 02-325109-7. Dunning was sentenced to two years of probation and ordered to pay a fine.

Dunning's Application

- 17. Dunning's Application consists of two parts. The first part is three pages and contains five sections, including applicant information. Dunning signed the first part of the Application on or about May 26, 2021.
- 18. The second part of the Application is the Supplemental, which is eight pages and contains nine sections. The Supplemental requires that the applicant disclose, among other things, their criminal history information.
- 19. Section 4A of the Supplemental requires an applicant to disclose their criminal history information. Dunning checked the box marked "no" to the question "Have you ever been convicted or pled guilty or nolo contendere (no contest) to a misdemeanor or felony?" (Emphasis in original.) Dunning's answer was not accurate because he had been convicted of two misdemeanors. For each criminal conviction, the applicant is required to disclose the approximate date of the conviction, the arresting agency, the court location, the criminal conviction, and the factual circumstances that led to the conviction. On his Supplemental, Dunning failed to disclose his two misdemeanor convictions. Dunning also wrote "n/a" in the sections asking for the arresting agency, the court location, and the criminal conviction. The fact of, and details regarding, Dunning's January 11, 2010 misdemeanor conviction for disorderly conduct under the influence of drugs and February 26, 2018 misdemeanor conviction for reckless driving were discovered by the Bureau during its background investigation.
- 20. Section 9 of the Supplemental is a Declaration, signed by Dunning on or about May 26, 2021, in which Dunning declared under penalty of perjury that the information provided in the Supplemental was "true, accurate, and complete." However, Dunning's Supplemental was

1 not true and accurate because Dunning had been convicted of two misdemeanors. Additionally, 2 Dunning's Supplemental was not complete because Dunning failed to disclose his two 3 misdemeanor convictions and provide the required details about the convictions. 4 **Dunning's Communications with the Bureau** 5 21. On or about November 1, 2021, the Bureau sent a letter to Jordan Aman, the 6 Designated Agent for Knighted (DA Aman), requesting that Dunning provide details regarding 7 the incidents leading to his misdemeanor convictions and the reason why Dunning failed to 8 disclose the convictions on his Supplemental. 9 22. On or about November 11, 2021, Dunning responded to the Bureau's November 1, 10 2021 inquiry. Dunning provided details regarding the incidents leading to his misdemeanor 11 convictions. However, Dunning did not provide a response regarding why he failed to disclose 12 the convictions on his Supplemental. 13 23. On or about November 17, 2021, the Bureau sent another letter to DA Aman 14 requesting that Dunning provide a signed and dated statement explaining why he failed to 15 disclose his convictions on his Supplemental. 16 24. On or about December 9, 2021, Dunning responded to the Bureau's November 17, 17 2021 inquiry. Dunning wrote that he did not disclose his reckless driving conviction because it is 18 a strike on his driver's license and he does not know how it is relevant to a gaming license badge. 19 Dunning did not provide a response regarding why he failed to disclose his misdemeanor 20 conviction for disorderly conduct under the influence of drugs. 21 Assessment of Dunning's Suitability for Licensure 22 25. For the reasons provided below, the Commission finds that Dunning failed to meet his 23 burden of providing his qualifications for licensure. The Commission also finds that Dunning is 24 disqualified from licensure. Therefore, causes exist to deny Dunning's Application. 25 Dunning failed to meet his burden of proving his qualifications for licensure 26 26. The burden is on the applicant to demonstrate their qualifications and suitability for 27 licensure. Dunning did not attend this evidentiary hearing despite submitting a Notice of Defense 28 requesting an evidentiary hearing on the consideration of his Application. As a result, DAG

Waian and the Commissioners were not able to ask Dunning any questions during the hearing. Additionally, Dunning's failure to attend and testify during the hearing deprived the Commissioners from receiving and considering any testimony from Dunning and evaluating his demeanor while testifying under oath. Further, Dunning did not submit any information or evidence in support of his Application during the hearing. As a result of Dunning's failure to attend and participate in the evidentiary hearing, and his failure to submit any information or evidence in support of his Application during the hearing, Dunning has failed to meet his burden of proving his qualifications for licensure. Therefore, Dunning's Application is subject to denial pursuant to Business and Professions Code sections 19856 and 19857, and CCR section 12040(a)(1).

Dunning failed to provide information required by the Act

27. All of the information requested on an application has been considered through the legislative and regulatory processes and determined necessary in order for the Commission to discharge its duties properly. An applicant is neither expected, nor permitted, to determine the importance of the information requested, and instead is required to provide true, accurate, and complete information as requested. To address any issues in completing the application, and to ensure that the information disclosed on an application is "true, accurate, and complete," the burden is on the applicant to carefully and thoroughly read the application, and to seek assistance with filling out the application if necessary. The applicant is responsible for both the information they disclose, and for failing to disclose required information, on the application. The applicant maintains this burden even if the applicant does not understand, misreads, or misinterprets a question on the application.

28. On his Supplemental, Dunning inaccurately checked the box marked "no" to the question "Have you <u>ever</u> been convicted or pled guilty or nolo contendere (no contest) to a misdemeanor or felony?" (Emphasis in original.) For each criminal conviction, Dunning was required to disclose the approximate date of the conviction, the arresting agency, the court location, the criminal conviction, and the factual circumstances that led to the conviction. On his Supplemental, Dunning failed to disclose his two misdemeanor convictions. Additionally, and as

a direct result of failing to disclose these two misdemeanor convictions, Dunning failed to disclose the required details of the convictions. The facts of, and details regarding, Dunning's January 11, 2010 misdemeanor conviction for disorderly conduct under the influence of drugs and February 26, 2018 misdemeanor conviction for reckless driving were discovered by the Bureau during its background investigation. Further, Dunning did not appear at the evidentiary hearing to explain or answer questions regarding his failure to disclose his two misdemeanor convictions on his Supplemental. By failing to disclose his two misdemeanor convictions and provide any details regarding these two misdemeanor convictions on his Supplemental, Dunning has failed to provide information required by the Act. By failing to provide information required by the Act on his Application, Dunning's Application is subject to denial pursuant to Business and Professions Code section 19859(b) and CCR section 12040(a)(2).

Dunning failed to reveal facts material to qualification

29. The existence of, and details regarding, an applicant's criminal history are facts material to the qualification for licensure of an applicant. For instance, they may affect the assessment of the applicant's general character, honesty, integrity, and/or ability to participate in controlled gambling. They may lead to a finding that the issuance of a license to such an applicant would be inimical to public health, safety, or welfare, or 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. An applicant's criminal record may be sufficient to support a factual finding and legal conclusion that the applicant poses a threat to the public interest of this state, to the effective regulation and control of controlled gambling, or creates or enhances 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 thereto. Finally, the existence of, and details regarding, an applicant's criminal convictions may reveal that the applicant is disqualified from licensure for conviction of a certain felony or a misdemeanor involving dishonesty and/or moral turpitude.

30. Dunning failed to disclose his two misdemeanor convictions on his Supplemental. Additionally, and as a direct result of failing to disclose these two misdemeanor convictions,

Dunning failed to disclose the required details of the convictions including the approximate date of the convictions, the arresting agencies, the court locations, the criminal convictions, and the factual circumstances that led to the convictions. As provided above, these details are facts material to Dunning's qualifications for licensure. By failing to disclose his two misdemeanor convictions on his Supplemental, and failing to provide any details regarding these convictions on his Supplemental, Dunning failed to reveal facts material to his qualifications for licensure. By failing to reveal facts material to his qualifications for licensure on his Application, Dunning's Application is subject to denial pursuant to Business and Professions Code section 19859(b) and CCR section 12040(a)(2).

Dunning supplied information that is untrue or misleading as to a material fact pertaining to the qualification criteria for licensure

- 31. As stated previously, the existence of, and details regarding, an applicant's criminal convictions are facts material to the qualification for licensure of an applicant.
- 32. On his Supplemental, Dunning checked the box marked "no" to the question "Have you <u>ever</u> been convicted or pled guilty or nolo contendere (no contest) to a misdemeanor or felony?" (Emphasis in original.) Dunning's response on the Supplemental that he had never been convicted of a crime was untrue. Dunning also wrote "n/a" in the sections asking for the arresting agency, the court location, and the criminal conviction even though those sections were applicable because Dunning had been convicted of two misdemeanors. By supplying untrue information on his Supplemental regarding his criminal history, and more specifically responding on the Supplemental that he had never been convicted of a crime and writing "n/a" in the sections asking for information related to his criminal history, Dunning supplied information that is untrue regarding a material fact pertaining to the qualification criteria for licensure. As a result, Dunning's Application is subject to denial pursuant to Business and Professions Code section 19859(b) and CCR section 12040(a)(2).
- 33. All documentary and testimonial evidence submitted by the parties that is not specifically addressed in this Decision and Order was considered but not used by the Commission in making its determination on Dunning's Application.

1 LEGAL CONCLUSIONS 2 Applicable Statutes and Regulations 3 34. Division 1.5 of the Business and Professions Code, the provisions of which govern the 4 denial of licenses on various grounds, does not apply to licensure decisions made by the 5 Commission under the Act. Business and Professions Code section 476(a). 6 35. The Act is an exercise of the police power of the state for the protection of the health, 7 safety, and welfare of the people of the State of California, and shall be liberally construed to 8 effectuate those purposes. Business and Professions Code section 19971. 9 36. Public trust that permissible gambling will not endanger public health, safety, or 10 welfare requires that comprehensive measures be enacted to ensure that gambling is free from 11 criminal and corruptive elements, that it is conducted honestly and competitively, and that it is 12 conducted in suitable locations. Business and Professions Code section 19801(g). 13 37. Public trust and confidence can only be maintained by strict and comprehensive 14 regulation of all persons, locations, practices, associations, and activities related to the operation 15 of lawful gambling establishments. Business and Professions Code section 19801(h). 16 38. The Commission has the responsibility of assuring that licenses, approvals, and 17 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose 18 operations are conducted in a manner that is inimical to the public health, safety, or welfare. 19 Business and Professions Code section 19823(a)(1). 20 39. An "unqualified person" means a person who is found to be unqualified pursuant to 21 the criteria set forth in Section 19857, and "disqualified person" means a person who is found to 22 be disqualified pursuant to the criteria set forth in Section 19859. Business and Professions Code 23 section 19823(b). 24 40. The Commission shall have all powers necessary and proper to enable it fully and 25 effectually to carry out the policies and purposes of this chapter. Business and Professions Code 26 section 19824. 27 41. The Commission has the power to deny any application for a license, permit, or 28 approval for any cause deemed reasonable by the Commission. Business and Professions Code

section 19824(b).

- 42. The Commission has the power to take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities. Business and Professions Code section 19824(d).
- 43. The burden of proving his or her qualifications to receive any license from the Commission is on the applicant. Business and Professions Code section 19856(a) and CCR section 12060(j).
- 44. An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling. Business and Professions Code section 19856(b).
- 45. 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. Business and Professions Code section 19856(c).
- 46. No gambling license shall be issued unless, based on all of the information and documents submitted, the Commission is satisfied that the applicant is a person of good character, honesty, and integrity. Business and Professions Code section 19857(a).
- 47. No gambling license shall be issued unless, based on all of the information and documents submitted, the Commission is satisfied that the applicant is 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. Business and Professions Code section 19857(b).
- 48. No gambling license shall be issued unless, based on all of the information and documents submitted, the Commission is satisfied that the applicant is a person that is in all other respects qualified to be licensed as provided in this chapter. Business and Professions Code

section 19857(c).

- 49. The Commission shall deny a license to any applicant who is disqualified for failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria. Business and Professions Code section 19859(b).
- 50. An application will be denied if the Commission finds that the applicant has not satisfied the requirements of Business and Professions Code section 19857. CCR section 12040(a)(1).
- 51. An application will be denied if the Commission finds that any of the provisions of Business and Professions Code section 19859 apply to the applicant. CCR section 12040(a)(2).
- 52. The hearing 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 upon which reasonable persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action. Business and Professions Code section 19871(a)(4) and CCR section 12060(g)(2).
- 53. 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 Bureau and the Commission as necessary to carry out the policies of this state relating to licensing, registration, and control of gambling. Business and Professions Code section 19866.
- 54. The Bureau relies, in large part, on the applicant's disclosures while conducting a background investigation. The failure to honestly, accurately, and completely disclose information on an application subverts the Bureau's efforts to conduct a thorough and complete investigation. Business and Professions Code sections 19826(a) and 19866.
- 55. Both the substance of an applicant's disclosures, and the truthfulness and thoroughness of an applicant's disclosures, are considered by the Bureau in making a recommendation as to the applicant's suitability for licensure, and by the Commission in making

1 a determination whether to approve or deny a license application. Business and Professions Code 2 sections 19824(a) and (d), 19826(a), and 19866. 3 Assessment of Dunning's suitability for licensure 4 56. Dunning failed to meet his burden of proving his qualifications for licensure. By 5 failing to meet his burden of proving his qualifications for licensure, Dunning has failed to satisfy 6 the Commission that he is a person that is in all other respects qualified to be licensed pursuant to 7 Business and Professions Code section 19857(c). Therefore, Dunning is unqualified for licensure 8 and his Application must be denied pursuant to Business and Professions Code sections 19856 9 and 19857, and CCR section 12040(a)(1). 10 57. Dunning failed to provide information required by the Act. Therefore, Dunning is 11 disqualified from licensure pursuant to Business and Professions Code section 19859(b) and his 12 Application must be denied pursuant to CCR section 12040(a)(2). 13 58. Dunning failed to reveal facts material to his qualification for licensure. Therefore, 14 Dunning is disqualified from licensure pursuant to Business and Professions Code section 15 19859(b) and his Application must be denied pursuant to CCR section 12040(a)(2). 16 59. Dunning supplied information that is untrue regarding a material fact pertaining to the 17 qualification criteria for licensure. As a result, Dunning is disqualified from licensure pursuant to 18 Business and Professions Code section 19859(b) and his Application must be denied pursuant to 19 CCR section 12040(a)(2). 20 NOTICE OF APPLICANT'S APPEAL RIGHTS 21 Dunning has the following appeal rights available under state law: 22 CCR section 12064, subsections (a) and (b) provide, in part: 23 (a) After the Commission issues a decision following a GCA hearing conducted pursuant to Section 12060, an applicant denied a license, permit, registration, or 24 finding of suitability, or whose license, permit, registration, or finding of 25 suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission. A request for reconsideration must 26 be: (1) Made in writing to the Commission, copied to the Complainant. The 27 Bureau may provide a written response to the Commission within 10 calendar days of receipt of the request; and 28

(2) Received by the Commission and Complainant within 30 calendar days of 1 service of the decision, or before the effective date specified in the decision, whichever is earlier. 2 3 (b) A request for reconsideration must state the reasons for the request, which must be based upon either: 4 (1) Newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission's issuance of the decision or at the 5 hearing on the matter; or, (2) Other good cause which the Commission may decide, in its sole discretion, 6 merits reconsideration. 7 Business and Professions Code section 19870, subdivision (f) provides: 8 A decision of the commission after an evidentiary hearing, denying a license or 9 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 10 any judicial proceeding held to consider that petition, and the court may grant the petition only if the court finds that the action of the commission was arbitrary and 11 capricious, or that the action exceeded the commission's jurisdiction. 12 CCR section 12066, subsection (c) provides: 13 A decision of the Commission denying an application or imposing conditions or 14 restrictions on a license after an evidentiary hearing will be subject to judicial review as provided in Business and Professions Code section 19870, subdivision 15 (f). Neither the right to petition for judicial review nor the time for filing the petition will be affected by failure to seek reconsideration. 16 17 /// 18 /// 19 /// 20 21 22 23 24 25 26 27 28 13

1 **ORDER** 2 1. Jesse Dunning's Application for Approval of Third-Party Proposition Player Services 3 Employee Type License is DENIED. 4 2. Jesse Dunning's third-party proposition player services worker temporary license 5 number TPWK-001366 is void and cannot be used hereafter pursuant to CCR section 12122(d). 6 3. No costs are awarded. 7 4. Each side to pay its own attorneys' fees. 8 This Order is effective on June 26, 2023. DocuSigned by: 9 5/18/2023 Dated: Signature: 10 Paula LaBrie, Chair 11 DocuSigned by: Dated: _ 5/18/2023 Eric Heins 12 Signature: Eric Heins, Commissioner 13 DocuSigned by: 14 William Liu 5/18/2023 Dated: Signature: 15 William Liu, Commissioner DocuSigned by: 16 5/18/2023 Dated: Signature: 17 Edward Yee, Commissioner 18 19 20 21 22 23 24 25 26 27 28 14