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

14 **In the Matter of the Application for Key
Employee License for:**

16 **MISTY VARGAS ALONZO**
17 [REDACTED]
18 [REDACTED]

Respondent.

CGCC Case No.: CGCC-2018-1004-4A
BGC Case No.: BGC-HQ2018-00056SL

STATEMENT OF REASONS

20 **PARTIES**

- 21 1. Stephanie Shimazu (Complainant) submits this Statement of Reasons solely in her
22 official capacity as the Director of the California Department of Justice, Bureau of Gambling
23 Control (Bureau).
- 24 2. On September 15, 2016, the Bureau received an Application for Gambling
25 Establishment Key Employee License (GEKE-002249), dated September 14, 2016, submitted by
26 Misty Vargas Alonzo (Respondent), to hold a key employee position at the Poker Flats Casino
27 (Poker Flats), a licensed gambling enterprise located in Merced, California. On September 15,
28

1 2016, the Bureau also received a Supplemental Background Investigation Information Form for
2 Key Employee from Respondent that was dated September 14, 2016.¹

3 3. On or about August 20, 2018, the Bureau issued its Cardroom Key Employee
4 Background Investigation Report for Respondent's Key Employee Application in which it
5 recommended that it be denied.

6 4. On or about October 4, 2018, the Commission considered the Key Employee
7 Application and the Bureau's denial recommendation, and referred the question of Respondent's
8 suitability for licensure to an evidentiary hearing, which is to be held pursuant to Business and
9 Professions Code sections 19870 and 19871.² (Cal. Code Regs., tit. 4, § 12060, subd. (a).)

10 5. Respondent submitted a Notice of Defense, dated October 11, 2018, which was
11 received by the Bureau on October 16, 2018, and forwarded to the Commission immediately
12 thereafter.

13 **ADDITIONAL RELEVANT LICENSING HISTORY**

14 6. Respondent was originally licensed as a key employee at Poker Flats on November
15 29, 2007.

16 7. In July 2014, Respondent purportedly left her employment at Poker Flats; and on July
17 31, 2014 her key employee license expired. On February 10, 2016, Respondent applied for a
18 work permit to work at the cardroom, which was issued on March 1, 2016.

19 8. On September 15, 2016, the Bureau received Respondent's application for an interim
20 key employee license, which was issued by the Commission on September 19, 2016.³

21
22 ¹ The key employee application and supplemental background information form are
23 jointly referred hereinafter as the "Key Employee Application."

24 ² The statutes and regulations applicable to this Statement of Reasons are quoted in
25 pertinent part in Appendix A. The full text of the Gambling Control Act (GCA) is found at
Business and Professions Code section 19800 et seq.

26 ³ Respondent's interim key employee license was cancelled on August 27, 2018, because
27 of the Bureau's recommendation of denial of Respondent's Key Employee Application at issue
28 herein. (Cal. Code Regs., tit. 4, § 12354, subd. (e)(5); see also subd. (d) ["Upon issuance or
denial of a regular key employee license by the Commission, the interim license previously issued
shall become invalid and shall not be used thereafter"].)

1 **BURDEN OF PROOF**

2 9. Respondent has the burden of proving that she is qualified to receive a Key Employee
3 license. (Bus. & Prof. Code, § 19856, subd. (a); see also § 19805, subds. (x) & (y).)

4 **FIRST CAUSE FOR DENIAL**

5 **(Performance of Key Employee Duties Without a License and**
6 **Failure to Timely Submit Key Employee Application)**

7 10. Respondent's Key Employee Application is subject to denial because of the
8 following:

9 a. As set forth in paragraphs 7 and 8, above, from August 1,
10 2014 to the issuance of her interim key employee license on
11 September 19, 2016, Respondent was not licensed under the GCA
12 to perform key employee duties. Nonetheless, during June 22 and
13 July 14, 2015 site visits to Poker Flats by Bureau representatives,
14 Respondent, acting in a key employee capacity, was present and
15 responded on behalf of the cardroom regarding the cardroom's
16 failure to post its valid state gambling license as required by law. A
17 Letter of Warning (LOW) was subsequently issued regarding that
18 violation.

19 b. On or about February 8, 2016, during a site visit to Poker
20 Flats by a Bureau representative, Respondent was present and
21 represented herself to be the manager of the cardroom, a key
22 employee position. Accordingly, Respondent was the cardroom's
23 point of contact for the Bureau in determining whether the
24 cardroom was in compliance with conditions imposed by the
25 Commission relative to the submission of applications for licensure
26 by two other key employees. A LOW was subsequently issued
27 regarding that non-compliance with those licensure conditions.
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1 11. Notwithstanding Respondent’s actions in representing herself as a manager or
2 other responsible employee for Poker Flats during the Bureau site visits on June 22 and
3 July 14, 2015, and February 8, 2016, Respondent stated during her background
4 investigation that she performed no duties at the cardroom from July 31, 2014 to February
5 23, 2016. In response to a supplemental Bureau inquiry as to why Respondent acted on
6 behalf of the cardroom as set forth in subparagraphs 10 (a) and (b), above, Respondent
7 stated in pertinent part:

8 I did not have any license during July of 2014 through February
9 of 2016. I was not working, just hanging around. This was my
10 Daddy’s business and I couldn’t just stay away from all the
11 customers we have acquired [*sic*] over the years. My Sister, Tawni,
12 had little idea how to run the cardroom and i [*sic*] did assist her if
she had questions. I walked out and left Tawni without enough
knowledge to run the Poker Room by herself. I helped my Sister
when we had inspections because she was still learning.

13 12. Respondent’s performance of key employee duties on behalf of the cardroom
14 without a key employee license violated Business and Professions Code sections 19850
15 and 19855, rendering her unsuitable for licensure as a Key Employee. (Bus. & Prof.
16 Code, §§ 19856, 19857, subd. (b), 19920 & 19922; Cal. Code. Regs., tit. 4, § 12355, subd.
17 (a)(1) [mandatory denial].)

18 13. Respondent’s failure to timely submit her Key Employee Application violated
19 Business and Professions Code section 19854, rendering her unsuitable for licensure as a
20 Key Employee. (Bus. & Prof. Code, §§ 19856, 19857, subd. (b), 19920 & 19922; Cal.
21 Code. Regs., tit. 4, § 12355, subd. (a)(1) [mandatory denial].)

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PRAYER

WHEREFORE, Bureau Director Shimazu requests that following the hearing to be held on the matters herein alleged, the Commission issue a decision:

1. Denying Respondent’s Key Employee Application, and
2. Taking such other and further action as the Commission may deem appropriate.

Dated: December 29, 2018


STEPHANIE SHIMAZU, Director
California Department of Justice
Bureau of Gambling Control
Complainant

1 **APPENDIX A – STATUTORY AND REGULATORY PROVISIONS**

2 **JURISDICTION**

- 3 1. Business and Professions Code section 19811, subdivision (b), provides:

4 Jurisdiction, including jurisdiction over operation and
5 concentration, and supervision over gambling establishments in this
6 state and over all persons or things having to do with the operation of
7 gambling establishments is vested in the commission.

- 8 2. Business and Professions Code section 19823 provides:

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

11 (1) Assuring that licenses, approvals, and permits are not
12 issued to, or held by, unqualified or disqualified persons, or by
13 persons whose operations are conducted in a manner that is
14 inimical to the public health, safety, or welfare.

15 (2) Assuring that there is no material involvement, directly
16 or indirectly, with a licensed gambling operation, or the
17 ownership or management thereof, by unqualified or disqualified
18 persons, or by persons whose operations are conducted in a
19 manner that is inimical to the public health, safety, or welfare.

20 (b) For the purposes of this section, "unqualified person" means
21 a person who is found to be unqualified pursuant to the criteria set
22 forth in Section 19857, and "disqualified person" means a person who
23 is found to be disqualified pursuant to the criteria set forth in Section
24 19859.

- 25 3. Business and Professions Code section 19824 provides in part:

26 The commission shall have all powers necessary and proper to
27 enable it fully and effectually to carry out the policies and purposes of
28 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
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
enterprise whether or not the commission takes action against the
license of the gambling enterprise.

* * *

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

3 4. Business and Professions Code section 19854, subdivision (a), provides:

4 Every key employee shall apply for and obtain a key employee
5 license.

6 5. Business and Professions Code section 19870 provides:

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

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

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

15 (d) All proceedings at a meeting of the commission relating to a
16 license application shall be recorded stenographically or by audio or
video recording.

17 (e) A decision of the commission denying a license or approval,
18 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
19 Code of Civil Procedure. Section 1094.5 of the Code of Civil
20 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.

21 6. Business and Professions Code section 19871 provides:

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

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

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

26 (A) To call and examine witnesses.

27 (B) To introduce exhibits relevant to the issues of the
28 case.

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

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

(E) To offer rebuttal evidence.

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

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

(b) Nothing in this section confers upon an applicant a right to discovery of the department's^[4] 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.

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

If the Commission elects to hold an evidentiary hearing, the hearing will be conducted as a GCA hearing under Section 12060, unless the Executive Director or the Commission determines the hearing should be conducted as an APA hearing under Section 12058

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

(a) If the Executive Director determines it is appropriate, he or she may set an application for consideration at a GCA hearing in advance of a meeting pursuant to Section 12054. 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 90 calendar days in advance of the GCA hearing. The Executive Director's determination will be based on information contained in the Bureau's report or other appropriate sources including, without limitation, a request from the Bureau or applicant as well as the Commission's operational considerations. The Commission retains the authority to refer the matter to an APA hearing pursuant to subsection (a) of Section 12056 or hear the matter

⁴ "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 at a Section 12054 meeting if the Commission deems it appropriate.

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

7 (c) The presiding officer shall have no communication with the
8 Commission or Commission staff upon the merits, or upon
9 information or documents related to the application prior to the
10 evidentiary hearing. The Executive Director shall designate a
11 presiding officer which shall be:

12 (1) A member of the Commission's legal staff; or,

13 (2) An Administrative Law Judge.

14 (d) The applicant or the complainant, or the applicant and the
15 complainant, may request a continuance in writing to the Executive
16 Director stating the reason for the continuance and any proposed
17 future hearing dates. The Executive Director or Commission may
18 approve the request.

19 (e) The complainant shall provide to the applicant, at least 45
20 calendar days prior to the GCA hearing, and the applicant shall
21 provide to the complainant, at least 30 calendar days prior to the GCA
22 hearing, the following items:

23 (1) A list of potential witnesses with the general subject of
24 the testimony of each witness;

25 (2) Copies of all documentary evidence intended to be
26 introduced at the hearing and not previously provided;

27 (3) Reports or statements of parties and witnesses, if
28 available; and

(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 pre-hearing order if
appropriate or requested by either party. The pre-hearing
conference and order may address the following:

(A) Evidentiary issues;

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

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

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

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

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

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

9 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

10 9 Business and Professions Code section 19805, subdivisions (x) and (y) states:

11 (x) “Key employee” means any natural person employed in the
12 operation of a gambling enterprise in a supervisory capacity or
13 empowered to make discretionary decisions that regulate gambling
14 operations, including, without limitation, pit bosses, shift bosses,
15 credit executives, cashier operations supervisors, gambling operation
16 managers and assistant managers, managers or supervisors of security
17 employees, or any other natural person designated as a key employee
18 by the department for reasons consistent with the policies of this
19 chapter.

20 (y) “Key employee license” means a state license authorizing
21 the holder to be employed as a key employee.

22 10. Business and Professions Code section 19850 provides:

23 Every person who, either as owner, lessee, or employee, whether
24 for hire or not, either solely or in conjunction with others, deals,
25 operates, carries on, conducts, maintains, or exposes for play any
26 controlled game in this state, or who receives, directly or indirectly,
27 any compensation or reward, or any percentage or share of the money
28 or property played, for keeping, running, or carrying on any controlled
game in this state, shall apply for and obtain from the commission, and
shall thereafter maintain, a valid state gambling license, key employee
license, or work permit, as specified in this chapter. In any criminal
prosecution for violation of this section, the punishment shall be as
provided in Section 337j of the Penal Code.

11. Business and Professions Code section 19854, subdivision (a), provides:

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

12. Business and Professions Code section 19855 provides:

Except as otherwise provided by statute or regulation, every
person who, by statute or regulation, is required to hold a state license
shall obtain the license prior to engaging in the activity or occupying
the position with respect to which the license is required. Every
person who, by order of the commission, is required to apply for a

1 gambling license or a finding of suitability shall file the application
2 within 45 calendar days after receipt of the order.

3 13 Business and Professions Code section 19856 states:

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

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

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

20 14. Business and Professions Code section 19857 provides in part:

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

24 * * *

25 (b) A person whose prior activities, criminal record, if any,
26 reputation, habits, and associations do not pose a threat to the public
27 interest of this state, or to the effective regulation and control of
28 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.

15. Business and Professions Code section 19920 provides:

It is the policy of the State of California to require that all
establishments wherein controlled gambling is conducted in this state
be operated in a manner suitable to protect the public health, safety,
and general welfare of the residents of the state. The responsibility for
the employment and maintenance of suitable methods of operation
rests with the owner licensee, and willful or persistent use or toleration
of methods of operation deemed unsuitable by the commission or by
local government shall constitute grounds for license revocation or
other disciplinary action.

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16. Business and Professions Code section 19922 provides:

No owner licensee shall operate a gambling enterprise in violation of any provision of this chapter or any regulation adopted pursuant to this chapter.

17. California Code of Regulations, title 4, section 12355, subdivision (a)(1) provides:

(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.