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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 Tribal
Key Employee Finding of Suitability
15 Regarding:

CGCC Case No. CGCC-2017-0828-14D1
BGC Case No. BGC-HQ2017-00014SL

16 **CORKHILL**

17 **STATEMENT OF PARTICULARS**

18
19 **Applicant.**

20
21 **PARTIES**

22 1. Nathan DaValle, submits this Statement of Particulars solely in his official capacity
23 as the Acting Director of the California Department of Justice, Bureau of Gambling Control
24 (Bureau).

25 2. On or about March 17, 2016, the Bureau received an Application for Finding of
26 Suitability Tribal Key Employee, dated February 11, 2016, and a Tribal Key Employee
27 Supplemental Background Investigation Information, dated February 25, 2016, (collectively:
28

1 Application)¹ submitted by Tony Grant Corkhill (Applicant), to hold the key employee position
2 of Security Supervisor at the Graton Resort and Casino, in Rohnert Park, California, which is
3 owned and operated by the Federated Indians of Graton Rancheria (Tribe).²

4 3. Applicant is not a member of the Tribe.

5 4. On or about June 6, 2017, the Bureau issued a Tribal Key Employee Background
6 Investigation Report in which it recommended to the Commission that the Application be
7 approved.

8 5. At its August 28, 2017 meeting, the Commission referred the question of Applicant's
9 suitability for a finding of suitability to an evidentiary hearing. (Cal. Code. Regs., tit. 4, § 12054,
10 subd. (a)(2).)³

11 6. On or about September 14, 2017, Applicant submitted a Notice of Defense, dated
12 September 11, 2017.

13 **BURDEN OF PROOF**

14 7. Applicant has the burden to prove that he is qualified and suitable to be issued a
15 finding of suitability. (Bus. & Prof. Code, § 19856, subd. (a).)

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20 ¹ On March 15, 2017, Applicant submitted another Application for Finding of Suitability
21 Tribal Key Employee, dated February 21, 2017. That application was identified as a "renewal"
22 application. It is technically neither an initial nor a renewal application. It is for the same key
23 employee position at the Graton Casino and Resort, and was only submitted to reflect that the
24 expiration date on his tribal key employee license was changed from March 2, 2018, to March 26,
25 2019.

26 ² Applicant was granted a tribal key employee license by the Tribe on March 3, 2015.
27 The California Gambling Control Commission (Commission) does not issue a key employee
28 license to Applicant. Rather, the Commission makes a finding of suitability because the Graton
Casino and Resort is owned and operated by the Tribe pursuant to a tribal-state compact. (Tribal-
State Compact Between the State of California and the Federated Indians of Graton, pp. 46-50, §
6.5.6.)

³ The statutes and regulations applicable to this Statement of Particulars are quoted in
pertinent part in Appendix A.

1 **LICENSURE CONSIDERATIONS**

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

3 8. On or about June 25, 2002, Applicant was convicted of violating Penal Code section
4 273.5, subdivision (e)(1), spousal battery, a misdemeanor, in the case *People of the State of*
5 *California v. Tony Grant Corkhill* (Super. Ct. Sonoma County, 2002, No. MCR390313).

6 9. On or about July 15, 2011, Applicant was convicted of violating Vehicle Code
7 section 23152, subdivision (b), driving under the influence of alcohol/0.008 percent, a
8 misdemeanor, in the case *People of the State of California v. Tony Grant Corkhill* (Super. Ct.
9 Sonoma County, 2011, No. SCR600507).

10 10. Applicant disclosed his criminal history on his Application.

11 11. Applicant has a negative financial history. On or about October 29, 2007, Applicant
12 filed for Chapter 7 Bankruptcy and ultimately discharged about \$49,514 in debt. Subsequent to
13 discharging that debt, Applicant amassed a total of approximately \$1,376 in additional, delinquent
14 debt, which is now in collections. The \$1,376 consists of about \$571 owed to Profolio and \$805
15 owed to Midland.

16 12. Applicant disclosed his bankruptcy on his Application. He also submitted evidence
17 to the Bureau that he has set up a payment plan for paying both the debts that were sent to
18 collections. However, he has not submitted to the Bureau evidence that he is current on his
19 payments under those payment plans, as requested by the Bureau.

20 13. The Tribe was aware of Applicant's criminal history and his bankruptcy filing, when
21 its Tribal Gaming Authority granted him a tribal key employee license.

22 14. From October 2002 to June 2013, Applicant was a dual rate security officer at the
23 River Rock Casino, which is owned and operated by the Dry Creek Band of Pomo Indians. On
24 June 10, 2010, having been advised of Applicant's 2002 conviction and his 2007 bankruptcy
25 filing, the Commission approved his application for a finding of suitability for this employment.

26 15. No employment-related problems have been reported to the Bureau for Applicant's
27 employment at either the Graton Resort and Casino or the River Rock Casino.

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16. Applicant has been truthful and generally cooperative throughout the application process.

CONCLUSION

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

Dated: October 24, 2017



NATHAN DAVALLE, Acting Director
Bureau of Gambling Control
California Department of Justice

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
7 of 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
12 are not issued to, or held by, unqualified or disqualified
13 persons, or by persons whose operations are conducted in
14 a manner that is inimical to the public health, safety, or
15 welfare.

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

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

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

28 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
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 * * *

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

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

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

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

9 5. Business and Professions Code section 19870 provides:

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

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

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

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

20 (e) A decision of the commission denying a license or
21 approval, or imposing any condition or restriction on the grant of a
22 license or approval may be reviewed by petition pursuant to Section
23 1085 of the Code of Civil Procedure. Section 1094.5 of the Code
24 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.

25 6. Business and Professions Code section 19871 provides:

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

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

1 affirmation.

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

3 (A) To call and examine witnesses.

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

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

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

11 (E) To offer rebuttal evidence.

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

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

23 (b) Nothing in this section confers upon an applicant a right
24 to discovery of the department's^[4] investigative reports or to
25 require disclosure of any document or information the disclosure of
26 which is otherwise prohibited by any other provision of this
27 chapter.

28 7. California Code of Regulations, title 4, section 12054, subdivision (a)(2) provides:

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

* * *

(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

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

1 additional information or consideration related to the
2 applicant's suitability.

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

4 (a) If the Executive Director determines it is appropriate, he
5 or she may set an application for consideration at a GCA hearing in
6 advance of a meeting pursuant to Section 12054. The Executive
7 Director shall give notice to the applicant, pursuant to paragraph (2)
8 subsection (c) of Section 12052, to the Office of the Attorney
9 General, and to the Bureau no later than 90 calendar days in
10 advance of the GCA hearing. The Executive Director's
11 determination will be based on information contained in the
12 Bureau's report or other appropriate sources including, without
13 limitation, a request from the Bureau or applicant as well as the
14 Commission's operational considerations. The Commission retains
15 the authority to refer the matter to an APA hearing pursuant to
16 subsection (a) of Section 12056 or hear the matter at a Section
17 12054 meeting if the Commission deems it appropriate.

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

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

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

(d) The applicant or the complainant, or the applicant and the
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 (1) A list of potential witnesses with the general subject
2 of the testimony of each witness;

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

5 (3) Reports or statements of parties and witnesses, if
6 available; and

7 (4) All other written comments or writings containing
8 relevant evidence.

9 (f) A presiding officer shall rule on the admissibility of
10 evidence and on any objections raised except for objections raised
11 under subsection (g). A ruling by the presiding officer shall be
12 final.

13 (1) In advance of the GCA hearing, upon a motion of a
14 party or by order of the presiding officer, the presiding officer
15 may conduct a pre-hearing conference, either in person, via
16 teleconference, or by email exchange, subject to the presiding
17 officer's availability and shall issue a pre-hearing order if
18 appropriate or requested by either party. The pre-hearing
19 conference and order may address the following:

20 (A) Evidentiary issues;

21 (B) Witness and exhibit lists;

22 (C) Alterations in the Bureau recommendation;

23 (D) Stipulation for undisputed facts including
24 the admission of the Bureau's report; and

25 (E) Other issues that may be deemed
26 appropriate to promote the orderly and prompt
27 conduct of the hearing.

28 (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.

1 (g) The Commission may, at any time upon a showing of
2 prejudice by the objecting party:

3 (1) Prohibit the testimony of any witness or the
4 introduction of any documentary evidence that has not been
disclosed pursuant to subsection (e); or

5 (2) Continue any meeting or hearing as necessary to
6 mitigate any prejudice.

7 (h) The complainant shall present all facts and information in
8 the Bureau report, if any, and the results of the Bureau's
9 background investigation, and the basis for any recommendation, if
10 the Bureau filed one with the Commission according to Business
11 and Professions Code section 19868, to enable the Commission to
12 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.

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

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

17 (k) Except as otherwise provided in subsection (g), the
18 complainant and applicant shall have the right to call and examine
19 witnesses under oath; to introduce relevant exhibits and
20 documentary evidence; to cross-examine opposing witnesses on any
21 relevant matter, even if the matter was not covered in direct
22 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.

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

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

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SPECIFIC STATUTORY AND REGULATORY PROVISIONS

9. 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.

10. 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.

12. Business and Professions Code, section 19859, subdivisions (d), provides:

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

* * *

(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.

13. The Tribal-State Compact Between the State of California and the Federated Indians of Graton Rancheria, section 6.5.6, pages 46-50, provides, in pertinent part:

- (a) The State Gaming Agency and the Tribal Gaming Agency (together with tribal gaming agencies under other gaming compacts) shall cooperate in developing standard licensing forms for tribal Gaming Employee license applications, on a statewide basis, that reduce or eliminate duplicative or excessive paperwork, which forms and procedures shall take into account the Tribe's requirements under IGRA and the expense thereof. To facilitate the State Gaming Agency's ability to

1 obtain any criminal information that may relate to the Applicant, each application
2 form shall be printed showing the State Gaming Agency's approval of its use, but
the approval shall not be unreasonably withheld.

- 3 (b) With respect to Gaming Employees, upon receipt of an Applicant's completed
4 license application and a determination to issue either a temporary or permanent
5 license, the Tribal Gaming Agency shall transmit within ten (10) days to the State
6 Gaming Agency for a determination of suitability for licensure under the
California Gambling Control Act a notice of intent to license the Applicant,
together with all of the following:
- 7 (1) A copy of all tribal license application materials and information received
8 by the Tribal Gaming Agency from the Applicant.
 - 9 (2) A complete set of fingerprint impressions, rolled by a certified fingerprint
10 roller, transmitted electronically.
 - 11 (3) A current photograph.
 - 12 (4) Except to the extent waived by the State Gaming Agency, such releases of
13 information, waivers, and other completed and executed forms as have
14 been obtained by the Tribal Gaming Agency.
- 15 (c) Upon receipt of a written request from a Gaming Resource Supplier or a Financial
16 Source for a determination of suitability, the State Gaming Agency shall transmit
17 an application package to the Applicant to be completed and returned to the State
18 Gaming Agency for purposes of allowing it to make a determination of suitability
19 for licensure.
- 20 (d) Investigation and disposition of applications for a determination of suitability shall
21 be governed entirely by State law, and the State Gaming Agency shall determine
22 whether the Applicant would be found suitable for licensure in a gambling
23 establishment subject to the State Gaming Agency's jurisdiction. Additional
24 information may be required by the State Gaming Agency to assist it in its
25 background investigation, to the extent permitted under State law for licensure in a
26 gambling establishment subject to the State Gaming Agency's jurisdiction.
- 27 (e) The Tribal Gaming Agency shall require a licensee to apply for renewal of a
28 determination of suitability by the State Gaming Agency at such time as the
licensee applies for renewal of a tribal gaming license.
- (f) Upon receipt of completed license or license renewal application information from
the Tribal Gaming Agency, the State Gaming Agency may conduct a background
investigation pursuant to state law to determine whether the Applicant is suitable
to be licensed for association with Class III Gaming operations. While the Tribal
Gaming Agency shall ordinarily be the primary source of application information,
the State Gaming Agency is authorized to directly seek application information
from the Applicant. The Tribal Gaming Agency shall provide to the State Gaming
Agency reports of the background investigations conducted by the Tribal Gaming
Agency and the NIGC and related applications, if any, for Gaming Employees,
Gaming Resource Suppliers, and 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

1 pursuant to section 19867 of that Code shall take into account reports of the
2 background investigation already conducted by the Tribal Gaming Agency and the
3 NIGC, if any. Failure to provide information reasonably required by the State
4 Gaming Agency to complete its investigation under State law or failure to pay the
5 application fee or deposit can constitute grounds for denial of the application by
6 the State Gaming Agency. The State Gaming Agency and Tribal Gaming Agency
7 shall cooperate in sharing as much background information as possible, both to
8 maximize investigative efficiency and thoroughness, and to minimize investigative
9 costs.

6 (g) Upon completion of the necessary background investigation or other verification
7 of suitability, the State Gaming Agency shall issue a notice to the Tribal Gaming
8 Agency certifying that the State has determined that the Applicant is suitable, or
9 that the Applicant is unsuitable, for licensure in a Gaming Operation and, if
10 unsuitable, stating the reasons therefore. Issuance of a determination of suitability
11 does not preclude the State Gaming Agency from a subsequent determination
12 based on newly discovered information that a person or entity is unsuitable for the
13 purpose for which the person or entity is licensed. Upon receipt of notice that the
14 State Gaming Agency has determined that a person or entity is or would be
15 unsuitable for licensure, the Tribal Gaming Agency shall deny that person or entity
16 a license and promptly revoke any tribal gaming license that has theretofore been
17 issued to that person or entity; provided that the Tribal Gaming Agency may, in its
18 discretion, reissue a tribal gaming license to the person or entity following entry of
19 a final judgment reversing the determination of the State Gaming Agency in a
20 proceeding in state court conducted pursuant to section 1085 of the California
21 Code of Civil Procedure.

15 (h) Prior to denying an application for a determination of suitability, or to issuing
16 notice to the Tribal Gaming Agency that a person or entity previously determined
17 to be suitable had been determined unsuitable for licensure, the State Gaming
18 Agency shall notify the Tribal Gaming Agency and afford the Tribe an opportunity
19 to be heard. If the State Gaming Agency denies an application for a determination
20 of suitability, or issues notice that a person or entity previously determined suitable
21 has been determined unsuitable for licensure, the State Gaming Agency shall
22 provide that person or entity with written notice of all appeal rights available under
23 state law.

20 (i) The Commission, or its successor, shall maintain a roster of Gaming Resource
21 Suppliers and Financial Sources that it has determined to be suitable pursuant to
22 the provisions of this section, or through separate procedures to be adopted by the
23 Commission. Upon application to the Tribal Gaming Agency for a tribal gaming
24 license, a Gaming Resource Supplier or Financial Source that appears on the
25 Commission's suitability roster may be licensed by the Tribal Gaming Agency in
26 the same manner as a Gaming Resource Supplier under subdivision (d) of section
27 6.4.4, subject to any later determination by the State Gaming Agency that the
28 Gaming Resource Supplier or Financial Source is not suitable or to a tribal gaming
license suspension or revocation pursuant to section 6.5.1; provided that nothing in
this subdivision exempts the Gaming Resource Supplier or Financial Source from
applying for a renewal of a State determination of suitability.