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10 **BEFORE THE**
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**
12 **STATE OF CALIFORNIA**
13

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

16 **KOUA XIONG**
17 
18 
19 TRKE-018625

Respondent.

CGCC Case No.: CGCC-2022-0811-12C

BGC Case No.: BGC-HQ2022-00020SL

STATEMENT OF REASONS

Hearing Date: June 13, 2023

Hearing Time: **9:00 a.m.**

Hearing Place: 2399 Gateway Oaks, Ste. 100
Sacramento, CA 95833

**This hearing will be conducted by means of
video conferencing on Zoom. The Zoom
meeting code is 285 757 8614.**

22
23 Complainant alleges as follows:

24 **PARTIES**

25 1. Yolanda Morrow (Complainant) brings this Statement of Reasons solely in her
26 official capacity as the Director of the California Department of Justice, Bureau of Gambling
27 Control (Bureau).
28

1 2. Koua Xiong (Respondent) has been employed by Graton Resort & Casino (Graton)
2 since 2013.¹ She assumed key employee duties (Dual Rate Dealer) in June 2017. Respondent
3 was demoted to Dealer (non-key employee) in March 2022. Respondent’s tribal gaming license
4 expires June 11, 2023. It is unknown whether Respondent is working at Graton as of the date of
5 this Statement of Reasons.

6 **THE APPLICATION AND THIS PROCEEDING**

7 3. On June 23, 2017, the Bureau received Respondent’s initial Application for Finding
8 of Suitability Tribal Key Employee (BGC-TKE-001 (Rev. 03/2015)) and a Tribal Key Employee
9 Supplemental Background Investigation Information (BGC-TBL-001 (Rev. 07/11))
10 (Application). The Application was occasioned by Respondent’s promotion from Dealer (non-
11 key) to Dual Rate Dealer (key) at Graton. Upon receipt of the Application, the Bureau assigned
12 Respondent Record Number TRKE-018625, and undertook a Tribal Key Employee Background
13 Investigation.

14 4. During its background investigation of the Respondent, the Bureau learned that
15 Respondent had failed to disclose certain derogatory employment information, and had
16 misrepresented certain other events in her employment history. The Bureau requested further
17 information from Respondent, and Respondent provided further responses. On March 17, 2022,
18 the Bureau met with the Tribal Gaming Agency (TGA) by telephone and informed it of the
19 Bureau’s intention to recommend denial of the Application.

20 5. On March 21, 2022, Respondent advised the Bureau that she had been moved to a
21 non-key employee position, and sought to withdraw the Application. The Bureau forwarded
22 Respondent’s request to withdraw to the Commission, and on May 26, 2022, the Commission
23 denied Respondent’s request to withdraw the Application. On May 27, 2022, the Bureau met
24 with Respondent by telephone and informed her of the basis for the Bureau’s recommendation to
25 deny the Application. On May 27, 2022, the Bureau also issued its Tribal Key Employee
26 Background Investigation Report recommending that the Application be denied.

27 _____
28 ¹ Respondent was suspended, terminated, and then rehired by Graton in mid-2015, as
described in paragraph 10, below.

1 employment at Jackson Rancheria Hotel and Casino by stating that she had left that employment
2 “for new employment,” when, in fact, she had been terminated for dishonesty and theft.

3 11. Respondent’s Application is further subject to mandatory or discretionary denial in
4 that Respondent failed to disclose that she had been suspended from employment at Graton in
5 2015 for failing to disclose that she had previously been terminated by Jackson Rancheria Resort
6 and Casino for dishonesty and theft. Respondent successfully appealed her suspension at Graton,
7 but was terminated as a result of an employment technicality at Graton and then rehired shortly
8 thereafter.

9 12. Respondent’s failures to disclose, and willingness to misrepresent, derogatory events
10 in her employment history make Respondent ineligible for licensure under the Gambling Control
11 Act as described in paragraphs ten and eleven, above.


12 (Bus. & Prof. Code, §§ 19856, 19857 [discretionary denial], 19859, subds. (a) & (b) [mandatory
13 denial]; Cal. Code Regs., tit. 4, § 12040, subds. (a)(1) & (2).)

14 **PRAYER**

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

- 17 1. Denying Respondent’s Application; and
18 2. Taking such other and further action as the Commission may deem appropriate.

19
20
21 Dated: April 27, 2023



Yolanda Morrow, Director
Bureau of Gambling Control
California Department of Justice

1 **APPENDIX A**

2 **BUSINESS AND PROFESSIONS CODE**

- 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
gambling establishments is vested in the commission.

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

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

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

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

16 (b) For the purposes of this section, “unqualified person” means a
17 person who is found to be unqualified pursuant to the criteria set forth
in Section 19857, and “disqualified person” means a person who is
18 found to be disqualified pursuant to the criteria set forth in Section
19859.

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

20 The commission shall have all powers necessary and proper to
21 enable it fully and effectually to carry out the policies and purposes of
this chapter,³ including, without limitation, the power to do all of the
22 following:

23 [¶] ... [¶]

24 (b) For any cause deemed reasonable by the commission, deny
25 any application for a license, permit, or approval provided for in this
chapter or regulations adopted pursuant to this chapter, limit,
26 condition, or restrict any license, permit, or approval, or impose any
fine upon any person licensed or approved. The commission may
27 condition, restrict, discipline, or take action against the license of an

28 ³ “Chapter” refers to Business and Professions Code, division 8, chapter 5, (commencing with section 19800), also known as the Gambling Control Act.

1 individual owner endorsed on the license certificate of the gambling
2 enterprise whether or not the commission takes action against the
license of the gambling enterprise.

3 [¶] ... [¶]

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

6 4. Business and Professions Code section 19853, subdivision (a), provides in part:

7 The commission, by regulation or order, may require that the
8 following persons register with the commission, apply for a finding of
9 suitability as defined in subdivision (i) of 19805, or apply for a
gambling license:

10 [¶] ... [¶]

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

12 5. Business and Professions Code, section 19854 provides, in part:

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

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

17 6. Business and Professions Code section 19856 provides:

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

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

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

1 7. Business and Professions Code section 19857 provides:

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

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

6 (b) A person whose prior activities, criminal record, if any,
7 reputation, habits, and associations do not pose a threat to the public
8 interest of this state, or to the effective regulation and control of
9 controlled gambling, or create or enhance the dangers of unsuitable,
10 unfair, or illegal practices, methods, and activities in the conduct of
11 controlled gambling, or in the carrying on of the business and financial
12 arrangements incidental thereto.

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

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

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

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

20 9. Business and Professions Code section 19866 provides:

21 An applicant for licensing or for any approval or consent required
22 by this chapter, shall make full and true disclosure of all information
23 to the department and the commission as necessary to carry out the
24 policies of this state relating to licensing, registration, and control of
25 gambling.

26 10. Business and Professions Code section 19870 provides:

27 (a) The commission, after considering the recommendation of the
28 chief⁴ and any other testimony and written comments as 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 application
or grant a license to an applicant who it determines to be qualified to
hold the license.

(b) When the commission grants an application for a license or
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.

⁴ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

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

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

6 (e) A decision of the commission denying a license or approval,
7 or imposing any condition or restriction on the grant of a license or
8 approval may be reviewed by petition pursuant to Section 1085 of the
9 Code of Civil Procedure. Section 1094.5 of the Code of Civil
10 Procedure shall not apply to any judicial proceeding described in the
11 foregoing sentence, and the court may grant the petition only if the
12 court finds that the action of the commission was arbitrary and
13 capricious, or that the action exceeded the commission's jurisdiction.

14 11. Business and Professions Code section 19871 provides:

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

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

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

21 (A) To call and examine witnesses.

22 (B) To introduce exhibits relevant to the issues
23 of the case.

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

27 (D) To impeach any witness, regardless of
28 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.

1 (b) Nothing in this section confers upon an applicant a right to
2 discovery of the department's⁵ investigative reports or to require
3 disclosure of any document or information the disclosure of which is
4 otherwise prohibited by any other provision of this chapter.

4 **CALIFORNIA CODE OF REGULATIONS**

5 12. California Code of Regulations, title 4, section 12040, subdivision (a) provides, in
6 part:

7 An application for an initial or renewal license:

8 (1) Will be denied if the Commission finds that the applicant
9 has not satisfied the requirements of Business and Professions
10 Code section 19857; or,

11 (2) Will be denied if the Commission finds that any of the
12 provisions of Business and Professions Code section 19859 apply
13 to the applicant.

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

13 Elect to hold or retract an evidentiary hearing in accordance with
14 Section 12056 and, for a renewal application, issue an interim renewal
15 license pursuant to Section 12035. The Commission will identify
16 those issues for which it requires additional information or
17 consideration related to the applicant's suitability.

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

19 If the Commission elects to hold an evidentiary hearing, the
20 hearing will be conducted as a GCA hearing under Section 12060,
21 unless the Executive Director or the Commission determines the
22 hearing should be conducted as an APA hearing under Section
23 12058

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

23 (a) If the Executive Director determines it is appropriate, he or
24 she may set an application for consideration at a GCA hearing in
25 advance of a meeting pursuant to Section 12054. The Executive
26 Director shall give notice to the applicant, pursuant to paragraph (2)
27 subsection (c) of Section 12052, to the Office of the Attorney General,
28 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

5 "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.
(h).)

1 sources including, without limitation, a request from the Bureau or
2 applicant as well as the Commission's operational considerations. The
3 Commission retains the authority to refer the matter to an APA
4 hearing pursuant to subsection (a) of Section 12056 or hear the matter
5 at a Section 12054 meeting if the Commission deems it appropriate.

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

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

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

18 (d) The applicant or the complainant, or the applicant and the
19 complainant, may request a continuance in writing to the Executive
20 Director stating the reason for the continuance and any proposed
21 future hearing dates. The Executive Director or Commission may
22 approve the request.

23 (e) The complainant shall provide to the applicant, at least 45
24 calendar days prior to the GCA hearing, and the applicant shall
25 provide to the complainant, at least 30 calendar days prior to the GCA
26 hearing, the following items:

- 27 (1) A list of potential witnesses with the general subject of
28 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
- (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

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

3 (A) Evidentiary issues;

4 (B) Witness and exhibit lists;

5 (C) Alterations in the Bureau recommendation;

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

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

9 (2) The GCA hearing need not be conducted according to
10 technical rules of evidence. Any relevant evidence may be
11 considered, and is sufficient in itself to support findings if it is the
12 sort of evidence on which reasonable persons are accustomed to
13 rely in the conduct of serious affairs, regardless of the existence of
14 any common law or statutory rule that might make improper the
15 admission of that evidence over objection in a civil action.

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

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

21 (2) Continue any meeting or hearing as necessary to mitigate
22 any prejudice.

23 (h) The complainant shall present all facts and information in the
24 Bureau report, if any, and the results of the Bureau's background
25 investigation, and the basis for any recommendation, if the Bureau
26 filed one with the Commission according to Business and Professions
27 Code section 19868, to enable the Commission to make an informed
28 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

1 any witness, regardless of which party first called the witness to
2 testify; and to offer rebuttal evidence. If the applicant does not testify
3 on his, her or its own behalf, the applicant may be called and
4 examined, under oath, as if under cross-examination.

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

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

12 16. California Code of Regulations, title 4, section 12120 provides, in part:

13 Applications for findings of suitability received pursuant to Tribal-
14 State gaming compact section 6.5.6 and comparable sections of new or
15 amended compacts for Tribal gaming employees in key employee
16 positions, Tribal gaming resource suppliers and financial sources, will
17 be processed as initial or renewal licenses consistent with Section
18 12040.

19 **TRIBAL-STATE COMPACT BETWEEN THE STATE OF CALIFORNIA**
20 **AND THE FEDERATED INDIANS OF GRATON RANCHERIA**

21 17. The Tribal-State Compact Between the State of California and the Federated Indians
22 of Graton Rancheria section 6.5.6 provides, in part:

23 (b) With respect to Gaming Employees, upon receipt of an Applicant's
24 completed license application and a determination to issue either a
25 temporary or permanent license, the Tribal Gaming Agency shall
26 transmit within ten (10) days to the State Gaming Agency for a
27 determination of suitability for licensure under the California
28 Gambling Control Act at notice of intent to license the Applicant
together with all of the following:

- 29 (1) A copy of all tribal license application materials and
30 information received by the Tribal Gaming Agency from the
31 Applicant.
- 32 (2) A complete set of fingerprint impressions, rolled by a
33 certified fingerprint roller, transmitted electronically.
- 34 (3) A current photograph.
- 35 (4) Except to the extent waived by the State Gaming Agency,
36 such releases of information, waivers, and other completed

1 and executed forms as have been obtained by the Tribal
2 Gaming Agency.

3 [¶] ... [¶]

- 4 (d) Investigation and disposition of applications for a determination of
5 suitability shall be governed entirely by State law, and the State
6 Gaming Agency shall determine whether the Applicant would be
7 found suitable for licensure in a gambling establishment subject to
8 the State Gaming Agency's jurisdiction. Additional information
9 may be required by the State Gaming Agency to assist it in its
10 background investigation, to the extent permitted under State law
11 for licensure in a gambling establishment subject to the State
12 Gaming Agency's jurisdiction.
- 13 (e) The Tribal Gaming Agency shall require a licensee to apply for
14 renewal of a determination of suitability by the State Gaming
15 Agency at such time as the licensee applies for renewal of a tribal
16 gaming license.
- 17 (f) Upon receipt of a completed license or license renewal application
18 information from the Tribal Gaming Agency, the State Gaming
19 Agency may conduct a background investigation pursuant to state
20 law to determine whether the Applicant is suitable to be licensed for
21 association with Class III Gaming operations. While the Tribal
22 Gaming Agency shall ordinarily be the primary source of
23 application information, the State Gaming Agency is authorized to
24 directly seek application information from the Applicant. The
25 Tribal Gaming Agency shall provide to the State Gaming Agency
26 reports of the background investigations conducted by the Tribal
27 Gaming Agency and the NIGC and related applications, if any, for
28 Gaming Employees If further investigation is required to
supplement the investigation conducted by the Tribal Gaming
Agency, the Applicant will be required to pay the application fee
charged by the State Gaming Agency pursuant to California
Business and Professions Code section 19951, subdivision (a), but
any deposit requested by the State Gaming Agency pursuant to
section 19867 of that Code shall take into account reports of the
background investigation already conducted by the Tribal Gaming
Agency and the NIGC, if any. Failure to provide information
reasonably required by the State Gaming Agency to complete its
investigation under State law or failure to pay the application fee or
deposit can constitute grounds for denial of the application by the
State Gaming Agency. The State Gaming Agency and Tribal
Gaming Agency shall cooperate in sharing as much background
information as possible, both to maximize investigative efficiency
and thoroughness, and to minimize investigative costs.

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

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