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

15 In the Matter of the Statement of Reasons for
16 Denial of Application for a Key Employee
License and Renewal Work Permit for:

17 **DAVID WHATLEY**
18 [REDACTED]

20 **Respondent,**

CGCC Case Nos. CGCC-2020-1029-12A;
CGCC-2020-1029-12B
BGC Case No. BGC-HQ2020-00037SL

STATEMENT OF REASONS

23 Complainant alleges as follows:

24 **PARTIES**

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

1 Respondent an Interim Renewal License with Condition,³ number GEWP-001598, which expires
2 September 30, 2022.

3 9. On or about November 17, 2020, Respondent submitted a Notice of Defense.

4 **BURDEN OF PROOF**

5 10. Respondent has the burden of proving his qualifications to receive a license.
6 (Bus. & Prof. Code, § 19856, subd. (a).)

7 **FIRST CAUSE FOR DENIAL**

8 **(Disqualified – Supplying Untrue or Misleading Information)**

9 11. Respondent’s Applications are subject to denial and his work permit subject to
10 revocation or cancellation because, under penalty of perjury, he failed to disclose derogatory
11 employment history on his Key Employee Application. Prior to commencing his employment
12 with the Nineteenth Hole, Respondent worked at a Starbucks Coffee branch in Seattle,
13 Washington. In a supplemental information form submitted to the Bureau, Respondent indicated
14 only that he left his employment with Starbucks to “become a poker dealer.” However, in an
15 earlier Work Permit Questionnaire dated September 1, 2010, Respondent stated he was
16 “[d]ischarged” from Starbucks. During the course of the instant application process on
17 November 25, 2019, Respondent responded to the Bureau’s inquiry that he failed to disclose his
18 termination from Starbucks because he “feared” he “would be denied for [his] application for Key
19 Employee.” This statement indicates Respondent’s awareness of the materiality of the untrue and
20 the misleading nature of the information he submitted and his desire to conceal the truth from the
21 Bureau. Respondent’s submissions to the Bureau further indicate he is not a person of good
22 character, honesty, and integrity, and that he poses a threat to the effective regulation and control
23 of controlled gambling.

24 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19859, subds. (a) & (b) [mandatory
25 denial], 19866; Cal. Code Regs., tit. 4, § 12355 subd. (a)(1) [mandatory denial].)

26
27
28 ³ The condition reads in relevant part: “David Whatley may not extend loans to any customers of the Nineteenth Hole.”

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
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 are conducted in a manner that is inimical to the public
14 health, safety, or welfare.

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

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

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

27 The commission shall have all powers necessary and proper to
28 enable it fully and effectually to carry out the policies and purposes of
29 this chapter,^[4] including, without limitation, the power to do all of the
30 following:

31 * * *

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

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

5 4. Business and Professions Code section 19805 provides:

6 * * *

7 (t) "House" means the gambling enterprise, and any owner,
8 shareholder, partner, key employee, or landlord therefor.

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

10 The commission, by regulation or order, may require that the
11 following persons register with the commission, apply for a finding of
12 suitability as defined in subdivision (i) of [Business and Professions
Code, section] 19805, or apply for a gambling license:

13 * * *

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

16 6. Business and Professions Code section 19854 provides:

* * *

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

19 7. Business and Professions Code section 19856 provides:

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

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

27 (c) In reviewing an application for any license, the commission
28 shall consider whether issuance of the license is inimical to public
health, safety, or welfare, and whether issuance of the license will

1 undermine public trust that the gambling operations with respect to
2 which the license would be issued are free from criminal and dishonest
elements and would be conducted honestly.

3 8. Business and Professions Code, section 19857 provides:

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

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

7 (b) A person whose prior activities, criminal record, if any,
8 reputation, habits, and associations do not pose a threat to the public
9 interest of this state, or to the effective regulation and control of
10 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.

11 9. Business and Professions Code section 19859 provides, in part:

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

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

16 (b) Failure of the applicant to provide information,
17 documentation, and assurances required by this chapter or requested
18 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.

19 10. Business and Professions Code, section 19866 provides:

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

23 11. Business and Professions Code, section 19870 provides:

24 (a) The commission, after considering the recommendation of the
25 chief^{5]} and any other testimony and written comments as may be
26 presented at the meeting, or as may have been submitted in writing to
the commission prior to the meeting, may either deny the application
27 or grant a license to an applicant who it determines to be qualified to
hold the license.

28 ⁵ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

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

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

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

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

18 12. Business and Professions Code, section 19871 provides:

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

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

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

25 (A) To call and examine witnesses.

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

28 (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 her or his own behalf,
he or she may be called and examined as if under cross-
examination.

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(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's⁶ 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.

13. Business and Professions Code section 19984 provides, in part:

* * *

(a) Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance by the department, and in no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won.

* * *

California Code of Regulations, title 4

14. California Code of Regulations, title 4, section 12200.7, provides, in part

(e) A proposition player contract shall be consistent with the provisions of Business and Professions Code section 19984, subdivision (a), prohibiting a gambling establishment or the house from having any interest, whether direct or indirect, in funds wagered, lost, or won. No proposition player contract shall be approved that would permit the house to bank any game in the gambling establishment.

* * *

15. 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

⁶ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

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

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

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

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

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

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

20 (e) The complainant shall provide to the applicant, at least 45
21 calendar days prior to the GCA hearing, and the applicant shall
22 provide to the complainant, at least 30 calendar days prior to the GCA
23 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

1 (4) All other written comments or writings containing
2 relevant evidence.

3 (f) A presiding officer shall rule on the admissibility of evidence
4 and on any objections raised except for objections raised under
5 subsection (g). A ruling by the presiding officer shall be final.

6 (1) In advance of the GCA hearing, upon a motion of a party
7 or by order of the presiding officer, the presiding officer may
8 conduct a pre-hearing conference, either in person, via
9 teleconference, or by email exchange, subject to the presiding
10 officer's availability and shall issue a pre-hearing order if
11 appropriate or requested by either party. The pre-hearing
12 conference and order may address the following:

13 (A) Evidentiary issues;

14 (B) Witness and exhibit lists;

15 (C) Alterations in the Bureau recommendation;

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

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

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

27 (g) The Commission may, at any time upon a showing of
28 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 her, his, or its burden of
proof. The complainant may but is not required to recommend or seek

1 any particular outcome during the evidentiary hearing, unless it so
2 chooses.

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

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

8 (k) Except as otherwise provided in subsection (g), the
9 complainant and applicant shall have the right to call and examine
10 witnesses under oath; to introduce relevant exhibits and documentary
11 evidence; to cross-examine opposing witnesses on any relevant matter,
12 even if the matter was not covered in direct examination; to impeach
13 any witness, regardless of which party first called the witness to
14 testify; and to offer rebuttal evidence. If the applicant does not testify
15 on her, his or its own behalf, the applicant may be called and
16 examined, under oath, as if under cross-examination.

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

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

24 17. California Code of Regulations, title 4, section 12354, provides, in
25 part:

26 * * *

27 (d) Upon issuance or denial of a regular key employee license by the
28 Commission, the interim license previously issued shall become
invalid and shall not be used thereafter.

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

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

* * *

18. California Code of Regulations, title 4, section 12355, provides, in
part:

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

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

* * *

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

* * *

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

* * *

(3) The Commission finds that the applicant has, within ten years immediately preceding the submission of the application, willfully or persistently violated any of the following:

(A) Any regulation adopted by the Commission or Bureau.

* * *