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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SACRAMENTO

13 NICOLE WHITEHOUSE, JOHNNIE  
MATRANGA, JOHN FIERRO, and  
14 CHERLYN ORTIZ,  
15 Plaintiffs,  
16 v.  
17 SACRAMENTO CASINO ROYALE, LLC;  
PACIFIC GAMING SERVICES, LLC; and  
18 DOES 1 through 30,  
19 Defendants.

Case No. 34-2014-00161427

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT**

Date: June 11, 2015  
Time: 2:00 p.m.  
Dept.: 53  
Judge: Hon. David I. Brown

**Reservation No.: 2047006**

Date Filed: April 4, 2014

Trial Date: Not set.

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1 **I. INTRODUCTION**

2 Under the California Constitution and Penal Code, Nevada-style gaming is illegal in  
3 California cardrooms. *See* Cal. Const. art. IV, § 19(e); Cal. Penal Code § 330.11. Specifically,  
4 California law prohibits “banked” games where one party—whether it be the “house” or any  
5 other entity—collects from all losers and pays all winners. *See Hotel Employees & Rest.*  
6 *Employees Int’l Union v. Davis*, 21 Cal. 4th 585, 608 (1999). In California cardrooms, games  
7 may be prohibited banked games *unless* they feature a limited “player-dealer position” whereby  
8 the role of “player-dealer” continuously and systematically rotates among participants so that all  
9 players assume the position’s risks and rewards. But when the player-dealer position does not  
10 continuously and systematically rotate and one player is allowed to act as player-dealer without  
11 interruption, the game is a prohibited banked game. *See Oliver v. Cnty. of Los Angeles*, 66 Cal.  
12 App. 4th 1397 (1998).

13 Defendants<sup>1</sup> offer prohibited banked games in which the player-dealer position does not  
14 rotate. Casino Royale’s standard practice, confirmed by witness testimony and video evidence, is  
15 to allow Pacific Gaming, a third-party proposition player, to act as player-dealer without  
16 interruption, creating banked games in flagrant violation of the law. Defendants’ banked games  
17 violate not only the law, but their own written policies. The Red Light Abatement Act instructs  
18 that this undisputed conduct is a nuisance that must be enjoined and sanctioned.

19 Defendants engaged in this open violation of the law from at least March 2014, when  
20 Plaintiffs<sup>2</sup> first conducted their investigation, to November 2014, when the Casino Royale  
21 cardroom was raided by the Department of Justice and closed pursuant to an emergency order for  
22 other violations. Casino Royale is currently challenging the Department of Justice’s closure order  
23 and proposed revocation of its gambling license. It has also solicited a buyer for the cardroom  
24 who seeks to resume operations at the cardroom’s current location, offering the same games.

25 Defendants do not dispute that they conduct games at the cardroom where the player-dealer

26  
27 <sup>1</sup> Sacramento Casino Royale, LLC (“Casino Royale”) and Pacific Gaming Services, LLC  
28 (“Pacific Gaming”) (collectively, “Defendants”).

<sup>2</sup> Nicole Whitehouse, Johnnie Matranga, John Fierro, and Cherlyn Ortiz.

1 position almost never rotates away from Pacific Gaming, the third-party proposition player. In  
2 fact, no less than *five* PMQ witnesses confirmed this practice in deposition. Because there are no  
3 material facts in dispute about the nature of Defendants' conduct, Plaintiffs are entitled to  
4 summary judgment on their claim under the Red Light Abatement Act, which provides that a  
5 place of illegal gambling is a nuisance per se that must be enjoined and abated.

6 The Red Light Abatement Act gives the Court discretion to order two remedies warranted  
7 here. First, the Court should enjoin Casino Royale from any future illegal gambling at the  
8 cardroom, whether operated by the current or future owner. Second, the Court should assess civil  
9 penalties against Defendants in recognition of the severity of the nuisance and its duration. That  
10 the cardroom is temporarily closed does not safeguard against Defendants' future misconduct nor  
11 excuse Defendants' past wrongdoing. Accordingly, Plaintiffs request the Court award summary  
12 judgment and enter the proposed order filed concurrently herewith.

## 13 II. BACKGROUND

### 14 A. California law prohibits "banked" games in which the player-dealer position 15 does not rotate continuously and systematically.

16 The state Constitution provides that: "The Legislature has no power to authorize, and shall  
17 prohibit, casinos of the type currently operating in Nevada and New Jersey." Cal. Const. art. IV,  
18 § 19(e). A casino of "the type . . . operating in Nevada and New Jersey" includes "especially  
19 banked table games and slot machines." *Hotel Employees*, 21 Cal. 4th at 605. This prohibition is  
20 codified in California Penal Code § 330, which prohibits "any banking or percentage game played  
21 with cards." Cal. Penal Code § 330. A "banking" game" is one in which the player-dealer  
22 position does not "continuously and systematically rotate." Cal. Penal Code § 330.11 provides  
23 that a "banking game" or a "banked game"

24 does not include a controlled game if the published rules of the game feature a player-  
25 dealer position and *provide that this position must be continuously and systematically*  
26 *rotated amongst each of the participants during the play of the game, ensure that the*  
27 *player-dealer is able to win or lose only a fixed and limited wager during the play of the*  
28 *game, and preclude the house, another entity, a player, or an observer from*  
maintaining or operating as a bank during the course of the game. For the purposes of  
this section it is not the intent of the Legislature to mandate acceptance of the deal by  
every player if the division finds that the rules of the game render the maintenance of or  
operation of a bank impossible by other means. The house shall not occupy the player-

1 dealer position.  
2 Cal. Penal Code § 330.11 (emphasis added).

3 **B. Cardrooms and third-party proposition players**

4 Cardrooms are gambling establishments licensed by the California Gambling Control  
5 Commission. Unlike Las Vegas-style casinos where players bet against the house, cardrooms are  
6 not permitted to operate banking games. Cal. Penal Code § 330.11. Nor may a cardroom, or any  
7 other person or entity, continually occupy the player-dealer position during any game. Third-  
8 Party Providers of Proposition Player Services (“TPP”) are regulated entities that provide services  
9 to cardrooms including “play as a participant in any controlled game that has a rotating player-  
10 dealer position as permitted by Penal Code section 330.11.” Cal. Code Regs. tit. 4, § 12200(28).

11 **III. FACTS**

12 **A. Defendant Casino Royale**

13 Defendant Casino Royale is a licensed gambling establishment that operated the Casino  
14 Royale cardroom inside the Red Lion Hotel at 500 Leisure Lane, Sacramento, California until  
15 November 3, 2014. *See* Declaration of Michelle Ybarra (“Ybarra Decl.”) Ex. A ¶¶16, 49.  
16 Between at least March 11, 2014 and November 3, 2014, Casino Royale offered “California  
17 games” at the cardroom, including variations of blackjack, baccarat, and pai gow. On November  
18 3, the Bureau of Gambling Control (the “Bureau”) issued an Emergency Order requiring Casino  
19 Royale to temporarily cease all gambling-related activities, premised on findings that Casino  
20 Royale lacked funds to cover chips-in-use, players’ banks, and jackpots. *Id.* Ex. B at ¶3. The  
21 Gambling Control Commission (the “Commission”) also issued an Accusation pursuant to which  
22 it seeks to revoke the licenses of Casino Royale and its managing members. *Id.* Ex. C at 10.

23 Casino Royale has challenged the Commission’s efforts to revoke its license and is attempting  
24 to regain the right to operate. *Id.* Ex. D (J. Kouretas Tr.) at 68:12-69:2. Its owners have also  
25 solicited a buyer for the casino, Stella Ma. Ms. Ma testified that she is “very interested” in  
26 purchasing the cardroom because of “the fact that it’s inside a hotel . . . It’s a very attractive point  
27 for me.” *Id.* Ex. E (Ma Tr.) at 41:15-24. Ms. Ma testified that she intends to reopen the cardroom  
28 under the name “California Casino Royale” at the same location, offering the same card games



1 and using the same employees. *Id.* at 61:15-20; 63:8-22; 66:15-25.

2 **B. Defendant Pacific Gaming**

3 Pacific Gaming has provided third-party proposition player services to Casino Royale since at  
4 least October 2013. *Id.* Ex. F at 1. Pursuant to the parties' contract, Pacific Gaming has the  
5 exclusive right to provide TPP services for Casino Royale's California games. *Id.* at 5. In  
6 exchange, Pacific Gaming pays Casino Royale a monthly fee, based in part on Pacific Gaming's  
7 assessment of how much business Casino Royale is likely to do. *Id.* Ex. G (Suson Tr.) at 27:10-  
8 29:4; 82:7-9. Each time Pacific Gaming acts as player-dealer during a game, it pays Casino  
9 Royale a collection fee. *See id.* at 46:6-25; 60:3-12; Ex. F at PGS00059-60.

10 **C. Defendants' training materials require systematic rotation of the player-  
11 dealer position.**

12 Defendants' written training materials instruct their employees to ensure that the player-dealer  
13 position moves from one player to the next in a continuous and systematic manner, in accordance  
14 with state law. For example, on October 11, 2012, Ms. Suson emailed Mr. Kouretas and other  
15 supervisors about the proper procedures for rotation, stating that "I want the banker to instruct the  
16 dealers to follow the rules of passing the bank every two hands." *Id.* Ex. D (Depo. Ex. 3).

17 Similarly, on August 5, 2013, a Casino Royale memo to staff reminded them that:

18 The bank must be systematically rotated around the table. **If there  
19 are 2 or more players on the table, the bank must move every  
two hands.** It does not matter if the banker does not object. This  
applies to Pai Gow Tiles as well as all other games.

20 *Id.* Ex. D (Depo. Ex. 5) (emphasis added); *see also id.* (J. Kouretas Tr.) at 96:1-5; Depo. Ex. 6.

21 Casino Royale reiterated this policy in an April 10, 2014 training memo ("the April 10  
22 Memo"), immediately following the filing of this lawsuit. The April 10 Memo, addressed to "All  
23 California Games Employees" and Defendant Pacific Gaming, stated that there would be "zero  
24 tolerance for failure to comply with rotating and offering the Player/Dealer position" and  
25 explained proper rotation procedure as follows:

26 The Player/Dealer position must rotate in a continuous and  
27 systematic fashion, and cannot be occupied by one person for more  
than two consecutive hands. **There must be an intervening  
28 Player/Dealer so one person cannot continually occupy the  
position and the "bank" hand within the meaning of OLIVER**

1 V. COUNTY OF LOS ANGELES (1988) 66 Cal. App. 4th 1397,  
2 1408-1409. . . .

3 *Id.* Ex. H (Depo. Ex. 7) (emphasis added). Casino Royale’s Dealer’s Manual similarly instructs  
4 that the player-dealer position must change hands, providing, for example, with respect to  
5 blackjack:

6 “[I]f the same person has already held the player/dealer position  
7 twice, rotate the player/dealer position clockwise to the next  
8 position on the table. **If there is no person that intervenes on the  
9 player/dealer’s position, the game will be “broken” or stopped  
10 as required by the California Penal Code.”**

11 *Id.* Ex. H (Depo. Ex. 13) at CASINO ROYALE000236 (emphasis added).

12 **D. Plaintiffs’ investigation revealed that Defendants do not rotate the player-  
13 dealer position in the California games.**

14 Prior to filing the Complaint, Plaintiffs retained the Mason Investigative Group (“MIG”) to  
15 observe and document the gambling operations at Casino Royale. MIG visited Casino Royale on  
16 eight occasions spanning a one-month period during March and April 2014. *Id.* Ex. I at ¶ 5.  
17 Over the course of those visits, MIG observed or participated in 448 games of blackjack, pai gow,  
18 and baccarat, during which the player-dealer position almost never rotated away from Defendant  
19 Pacific Gaming. *Id.* at ¶¶6-13. Following the filing of the Complaint, which sets forth MIG’s  
20 observations, Casino Royale asked its employee, Keith Abid, to review surveillance footage of  
21 the gameplay observed or participated in by MIG. Mr. Abid, one of Casino Royale’s PMQ  
22 witnesses, later testified that out of all the hands MIG observed or participated in, a player other  
23 than Pacific Gaming assumed the player-dealer position only “on one occasion.” *Id.* Ex. J at  
24 (Abid Tr.) at 17:12-18:6; 25:8-11; 54:15–55:12.

25 Casino Royale effectively conceded the same in its responses to Plaintiffs’ First Set of  
26 Requests for Admission (“RFAs”), admitting that Pacific Gaming occupied the player-dealer  
27 position during all but two hands in which MIG observed or participated. *Id.* Ex. K at 7. In  
28 short, it is undisputed that between March and April 2014, Pacific Gaming occupied the player-  
dealer position for at least 446 of 448 observed hands of blackjack, pai gow, and baccarat played  
at the cardroom.

1           **E. Defendants admit that the player-dealer position does not rotate in the**  
2           **California games.**

3           Defendants' admissions go beyond the games in which Plaintiffs' investigators observed or  
4           participated. Every Casino Royale and Pacific Gaming witness who has testified in this case has  
5           admitted that Pacific Gaming regularly acts as the player-dealer and that the position does not  
6           rotate among players at the table during play.

7                   **1. James Kouretas, Casino Royale's managing member and PMQ**  
8                   **witness, testified that it was "perfectly fine" to bank games.**

9           James Kouretas, an attorney and Casino Royale's managing member and PMQ witness,  
10          founded the cardroom and testified that he is responsible for compliance with the law. Ybarra  
11          Decl. Ex. D (J. Kouretas Tr.) at 9:25-1; 10:7-11; 14:13-25; 106:1-3. Mr. Kouretas testified that  
12          the Casino Royale "dealer was required to *offer*" the player-dealer position to other players at the  
13          table—but not that it ever actually change hands. *Id.* at 49:10-50:7 (emphasis added). If no  
14          player accepts the player-dealer position, then Pacific Gaming (or any other TPP) acts as the  
15          "default banker." *Id.* at 50:8-11; *see also id.* at 56:3-12. Mr. Kouretas testified that "the role of  
16          the third-party provider" is to "bank the game, so to speak. They share in the win and the loss."  
17          *Id.* at 34:21-23. Mr. Kouretas also testified that it was "perfectly fine" if no player other than the  
18          TPP acts as player-dealer during California games. *Id.* at 58:16-25; *see also* 121:19-22. He  
19          testified that his understanding of what the law requires is inconsistent with the April 10 Memo  
20          wherein Casino Royale instructs:

21                   The Player/Dealer position must rotate in a continuous and  
22                   systematic fashion, and cannot be occupied by one person for more  
23                   than two consecutive hands. There must be an intervening  
24                   Player/Dealer so one person cannot continually occupy the position  
25                   and the "bank."

26          *Id.* at 106:4-14, Ex. H (Depo. Ex. 7). Contrary to the April 10 Memo, Mr. Kouretas testified that  
27          merely offering the player-dealer position to players during a game—even if no one accepted—  
28          was sufficient:

                  Q: So your understanding was that the Penal Code could be  
                  satisfied by offering the deal?

                  A: Yes.

1 Q: And if no one accepted it and the player/dealer remained the  
2 same throughout an extended period of time that was fine?

A: Yes.

3 *Id.* Ex. D (J. Kouretas Tr.) at 120:13-19. Mr. Kouretas admitted that Casino Royale's practice  
4 was to conduct card games where the player-dealer position did not change hands:

5 Q: So your understanding, the third-party provider could just bank  
6 the game all day and all night if none of the other players at the  
7 game wanted to accept the offer?

A: That was my understanding and that's how the business ran at  
8 Casino Royale.

*Id.* at 106:15-20.

9 **2. Karen Kouretas, Casino Royale's Assistant General Manager and  
10 PMQ witness, testified that the third-party player would "continually  
11 bank the game" at the cardroom.**

12 Karen Kouretas, Casino Royale's Assistant General Manager and PMQ witness, similarly  
13 testified that, during the California games, "if no one accepted the bank, the third-party  
14 proposition player would continue to bank the game." Ybarra Decl. Ex. H (K. Kouretas Tr.) at  
15 144:6-11. Ms. Kouretas admitted that this has been Casino Royale's practice for years:

16 Q: So is it your understanding that that was Casino Royale's  
17 practice in 2013 and 2014 where the bank – where if no one  
18 accepted the bank, the third-party proposition player would  
19 continue to bank the game?

A: I would – that's my understanding is we would bank the game,  
20 the third party.

21 *Id.* Ms. Kouretas testified that "we don't stop the game because nobody wants to bank it" but  
22 instead "it goes back to the third party." *Id.* at 141:6-16. She conceded that the third-party  
23 proposition player would "continually" act as player-dealer:

24 Q: So you're saying that pursuant to [the Casino Royale Dealer's  
25 Manual], if no person intervenes in the player/dealer position and  
26 accepts the bank the game would be broken or stopped?

A: That is not my understanding.

27 Q: That did not take place?

A: I – that's not my understanding.

28 **Q: It's your understanding that the third-party proposition  
player would continue to act as the bank and continually bank  
the game, correct?**

**A: That's my understanding.**

1 *Id.* 145:15-24 (emphasis added).

2                   3.       **Casino Royale’s own consultants testified that Pacific Gaming**  
3                   **“commonly” and “primarily” banked card games.**

4           Elijah Zuniga provides consulting services to Casino Royale. *See* Ybarra Decl. Ex. L (Zuniga  
5 Tr.) at 33:17-19. Mr. Zuniga inspects Casino Royale approximately twice a month, and regularly  
6 reviews surveillance video of Casino Royale’s gaming activity. *Id.* at 52:20-53:5; 60:14-17. Mr.  
7 Zuniga, also a PMQ witness for Casino Royale, admitted that the third-party provider at Casino  
8 Royale regularly acts as player-dealer in Casino Royale’s blackjack games:

9                   Q: Most of the time the player/dealer position, regardless of how  
10                   often it was offered, remained with the third-party provider and did  
11                   not change hands continually and systematically among the player  
12                   at the table; correct?

13                   A: In blackjack?

14                   Q: Yes.

15                   A: Correct.

16           *Id.* at 55:6-13; *see also* 59:2-9 (admitting same as to baccarat). Mr. Zuniga testified that “there’s  
17 always an edge on every game within a cardroom” such that “the person in the player/dealer  
18 position will win more than the player over time.” *Id.* at 22-15. He explained that

19                   [I]f you look at it from a player's point of view, you want to take the  
20                   player/dealer position because **if you've got enough money to**  
21                   **bank the game and stay there for a while, you're going to do**  
22                   **okay. . . it's how everything else works, how Vegas was built.**

23           *Id.* at 21:21-22:2 (emphasis added). Mr. Zuniga agreed that when a third-party provider is  
24 continually banking a game, they are the recipient of this edge or advantage. *Id.* at 22:16-19.

25           After this lawsuit was filed, Casino Royale hired another consultant, Robert Lytle, to observe  
26 Casino Royale’s compliance with the rotation requirement. *See* Ybarra Decl. Ex. M (Lytle Tr.) at  
27 19:7-25. Mr. Lytle, also a Casino Royale PMQ witness, testified that the third party would  
28 “commonly” bank the blackjack games without any other player intervening:

                  Q: In blackjack, would you say that it was commonly a situation  
                  where the third-party proposition player would bank the hands of  
                  the game?

                  A: Yes.

                  Q: And it was commonly the situation where no other players  
                  would intervene to break up the banking of the game by the third-  
                  party proposition player?

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A: I would say most of the time.

*Id.* at 32:6-13. Mr. Lytle testified that in baccarat, the TPP “primarily bank[ed] the game” and it was “rare to have another player break the banking of the game by the proposition player.” *Id.* at 32:14-19; *see also* 32:20-33:10; 56:11-58:19.

**4. Lori Suson, Pacific Gaming’s owner and PMQ witness, did not “ever see” Casino Royale prevent a player from continually acting as the player-dealer.**

Lori Suson is the founder and owner of Pacific Gaming. *See* Ybarra Decl. Ex. G (Suson Tr.) at 13:18-21; 18:6-10. Ms. Suson testified that in all of the California games played at the cardroom, Pacific Gaming regularly occupies the player-dealer position. *Id.* at 60:3-12. These practices were the same both before and after Plaintiffs filed their Complaint. *Id.* at 62:12-63:12. Indeed, Ms. Suson has never seen Casino Royale follow the dictates of the April 10 Memo prohibiting one person from “continually occupy[ing] the [bank] position.” *Id.* at 53:15-20.

\* \* \*

In short, every witness to have testified on behalf of the Defendants admitted that the player-dealer position does not continuously and systematically rotate during games played at the cardroom, and, instead, Pacific Gaming regularly banks the California games.

**F. Video surveillance confirms that Defendants do not continuously and systematically rotate the player-dealer position during play.**

To confirm the Defendants’ illegal conduct, Plaintiffs retained a consulting firm, Conroy & Associates, to conduct a randomized review of Casino Royale’s surveillance footage. Conroy & Associates reviewed a random sample of 15 hours of gaming footage at Casino Royale, played between March 10 and May 1, 2014. *See* Ybarra Decl. Ex. V (Conroy Report) at 3-11. Based on this review, Conroy & Associates concluded that Pacific Gaming occupied the player-dealer position for 917 out of 926 observed hands of the California games. *Id.*

**IV. APPLICABLE LAW**

**A. The Red Light Abatement Act provides that a place of illegal gambling is a nuisance per se.**

Plaintiffs bring this action under the Red Light Abatement Act, California Penal Code §

1 11225 *et seq.* (the “Act”) to enjoin Defendants’ illegal gambling operation whereby Defendants  
2 conduct Nevada-style “banked” card games for their own profit, in violation of well-settled law.

3 The Act provides that a place of illegal gambling is a nuisance per se:

4           Every building or place used for the purpose of illegal gambling as  
5           defined by state law or local ordinance . . . and every building or  
6           place in or upon which acts of illegal gambling as defined by state  
7           law or local ordinance . . . are held or occur, is a nuisance which  
8           shall be enjoined, abated, and prevented, and for which damages  
9           may be recovered, whether it is a public or private nuisance.

7 Cal. Penal Code § 11225(a)(1). Where such a nuisance exists, a citizen may bring suit “to abate  
8 and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and  
9 the owner lessee or agent of the building or place, in or upon which the nuisance exists, from  
10 directly or indirectly maintaining or permitting it.” *Id.* § 11226.

11           An injunction may issue upon a showing of the existence of a nuisance to the satisfaction of  
12 the court. *People v. Adult World Bookstore*, 108 Cal. App. 3d 404, 409 (1980). The Act does not  
13 require any particular number of acts to prove that a place is a nuisance, but only a showing that  
14 prohibited acts “regularly occurred on the premises.” *See People ex rel. Sorenson v. Randolph*,  
15 99 Cal. App. 3d 183, 188 (1979). No specific intent to engage in prohibited conduct need be  
16 shown. *Id.* Nor is a showing of personal knowledge on the part of the operator of the premises a  
17 prerequisite to relief. *See People ex rel. Hicks v. Sarong Gals*, 42 Cal. App. 3d 556, 561 (1974).

18           Where the existence of a nuisance has been established, the court “shall allow . . . [an]  
19 injunction to abate and prevent the continuance or recurrence of the nuisance.” Cal. Penal Code §  
20 11227(a). The injunction may enjoin subsequent owners who acquire the building where the  
21 nuisance exists. *Id.* § 11227(b). Additionally, the court may assess a civil penalty of up to  
22 \$25,000 “against any and all of the defendants, based upon the severity of the nuisance and its  
23 duration.” *Id.* §11230(b).

24           **B.       The California Constitution and Penal Code prohibit “banked” card games.**

25           California has prohibited “banked” card games for over a century. In 1872, the Legislature  
26 enacted Penal Code § 330, which criminalized banked games:

27           Every person who deals, plays, or carries on, opens, or causes to be  
28           opened, or who conducts, either as owner or employee, whether for  
                hire or not, any game of faro, monte, roulette, lansquenet, rouge et

1           noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey  
2           pokey, or **any banking or percentage game played with cards** . . .  
3           is guilty of a misdemeanor . . . .

4 Cal. Penal Code § 330 (emphasis added). In 1984, California voters amended the state  
5 Constitution to provide: “The Legislature has no power to authorize, and shall prohibit, casinos of  
6 the type currently operating in Nevada and New Jersey.” Cal. Const. art. IV, § 19(e). The  
7 California Supreme Court has interpreted § 19(e) to *especially* prohibit banked games and to  
8 “elevate [Penal Code § 330] statutory prohibitions on a set of gambling activities to a  
9 constitutional level.” *Hotel Employees*, 21 Cal. 4th at 605-606.

10       A prohibited banking game is a game in which one player has the opportunity to continuously  
11 act as player-dealer and has a fund of money against which all players bet. Put another way, “[i]n  
12 a banking game the banker . . . pays all the winnings and suffers all the losses; he is the one  
13 against the many, which is the supreme test of a banking game.” *People v. Ambrose*, 122 Cal.  
14 App. 2d Supp. 966, 970 (1953). The banker “has a direct interest in the outcome of the game,  
15 because the amount of money [he] will have to pay out depends upon whether each of the  
16 individual bets is won or lost.” *W. Telcon, Inc. v. Cal. State Lottery*, 13 Cal. 4th 475, 488 (1996).  
17 The Legislature found banking games particularly suspect because “(1) the house has an  
18 advantage in the player position it chooses for itself, and/or (2) the house has seemingly unlimited  
19 funds.” *Oliver*, 66 Cal. App. 4th at 1408 n.6.

20       The California Supreme Court has made clear that banking games are illegal, regardless of  
21 who provides the funds to bank the game—whether it be the cardroom, or some other entity. *See*  
22 *Hotel Employees*, 21 Cal. 4th at 608 (an illegal banking game includes a game “banked by  
23 someone other than the owner of the gambling facility”). Thus, a card game played for money  
24 can be a prohibited banking game even when the cardroom does not act as player-dealer.

25           **C. Games where the player-dealer position “continuously and systematically”  
26 rotates during play are not prohibited, but merely offering rotation is  
27 insufficient.**

28       Cardrooms may legally operate certain games provided that they comply with the law’s  
requirement that the player-dealer position “continuously and systematically” rotates among  
players at the table. The Penal Code provides that “banking game” “does not include a controlled



1 game if the published rules of the game feature a player-dealer position and provide that this  
2 position must be continuously and systematically rotated amongst each of the participants during  
3 the play of the game . . . preclud[ing] the house, another entity, a player, or an observer from  
4 maintaining or operating as a bank.” Cal. Penal Code. § 330.11. Thus, when the player-dealer  
5 position rotates, neither the house nor any one player is in exclusive possession of the advantage  
6 inherent in being player-dealer. But when the player-dealer position fails to rotate “continuously  
7 and systematically,” the game is an illegal banking game.

8 A game is still be a prohibited banking game even where the player-dealer position is *offered*  
9 to other players at the table, but does not actually have to rotate. *Oliver v. County of Los Angeles*  
10 is instructive. In *Oliver*, the Court of Appeal considered whether the game “Newjack” was a  
11 prohibited banking game. 66 Cal. App. 4th at 1408. In Newjack, each player has the option to be  
12 player-dealer for two consecutive hands; after that, the player-dealer position is offered to the  
13 player on the left and keeps passing until a player accepts. *Id.* But Newjack’s rules also allow a  
14 player to decline the offer to be player-dealer; as a result, one player could end up serving as  
15 player-dealer for more than two consecutive hands if all other players decline the offer, resulting  
16 in a banked game. This in fact regularly occurred; the court noted that in the more than 50 games  
17 of Newjack observed or participated in, “there were numerous instances where the players would  
18 decline the opportunity to be the player-dealer and the result would be that one player would  
19 continuously act as the player-dealer for many games.” *Id.* (quotations omitted). The court found  
20 that because the player-dealer position in Newjack did not *have* to rotate among players, Newjack  
21 is a prohibited banking game under section 330. *See id.*

22 **D. Whether a game is a “banking” game is a question of law and properly**  
23 **decided by the courts.**

24 As the California Supreme Court has recognized, “whether a particular described game is . . .  
25 [an illegal] banking game . . . is a question of law” properly decided by the courts. *W. Telcon*, 13  
26 Cal. 4th at 488. *See also* Order Overruling Demurrer (Dkt. 259) (“Demurrer Order”) at 3 (“this  
27 court has jurisdiction to determine whether defendants are engaged in illegal gambling as defined  
28 by the Penal Code”); *Sullivan v. Fox*, 189 Cal. App. 3d 673, 678 (1987) (“[Pai gow’s] legality or

1 illegality . . . is an issue of law”). California courts have repeatedly made such determinations in  
2 the summary judgment context by analyzing rotation of the player-dealer position.

3 In *Oliver*, the trial court ruled on summary judgment that Newjack was a prohibited banking  
4 game, and the Court of Appeal affirmed summary judgment declaring the game illegal. See  
5 *Oliver*, 66 Cal. App. 4th at 1408. In *Kelly v. First Astri Corp.*, the court found “Sycuan 21” to be  
6 a prohibited banking game in the summary judgment context, reasoning that because the  
7 undisputed material facts established that the defendant “acted [as banker] for repeated hands . . .  
8 nothing more need be shown” to establish it was a prohibited banking game. 72 Cal. App. 4th  
9 462, 492 (1999). See also *W. Telcon*, 13 Cal. 4th at 479 (reversing grant of summary judgment  
10 and finding “Keno” constituted an illegal banking game).

## 11 V. LEGAL STANDARD

12 The court may grant summary judgment where “there is no defense to the action or  
13 proceeding” and no triable issue of material fact. Cal. Code Civ. Proc. § 437c(a). A plaintiff  
14 meets his burden of showing there is no defense to the action if he proves each element of the  
15 cause of action. *Id.* § 437c(p)(1). Once the plaintiff has done so, the burden shifts to the  
16 defendant to show that a triable issue of material fact exists. *Id.* However, the defendant “may  
17 not rely upon the mere allegations or denials of its pleadings” to establish such, but instead must  
18 set forth “specific facts” in support. *Id.*

19 “Admissions of a party receive an unusual deference in summary judgment proceedings.” *Le*  
20 *Bourgeois v. Fireplace Mfrs., Inc.*, 68 Cal. App. 4th 1049, 1060 n.12 (1998) (citation omitted).  
21 “An admission is binding unless there is credible explanation for the inconsistent positions taken  
22 by a party.” *Id.* Further, “the nonmoving party’s admissions may be used to establish that no  
23 material factual issues remain to be resolved by trial.” *Id.*

## 24 VI. ARGUMENT

### 25 A. Plaintiffs are entitled to summary judgment on their RLAA claim.

26 To establish a nuisance under the Red Light Abatement Act, Plaintiffs must show that the  
27 cardroom is “used for the purpose of illegal gambling as defined by state law” or that “acts of  
28 illegal gambling as defined by state law or local ordinance . . . are held or occur” there. Cal.

1 Penal Code § 11225. As discussed above, games where the player-dealer position does not  
2 “continuously and systematically” rotate during play are banking games. *See* Cal. Penal Code  
3 330.11. California law is clear that “games which are conducted as banking games are illegal.”  
4 *Walker v. Meehan*, 194 Cal. App. 3d 1290, 1303 (1987). Thus, Plaintiffs need only establish that  
5 Defendants conducted banking games at the cardroom in order to prove a violation of the Act.  
6 *See* Demurrer Order at 1 (holding that Complaint states a cause of action under the Act).

7 **1. Defendants admit they failed to systematically and continuously rotate**  
8 **the player-dealer position during games played at the cardroom.**

9 There is no dispute that Defendants regularly conduct games at the cardroom in which the  
10 player-dealer position rarely, if ever, rotated away from Pacific Gaming—much less every two  
11 hands as instructed by *Oliver*. *Oliver*, 66 Cal. App. 4th at 1408-09. As discussed above, every  
12 witness who testified on behalf of Defendants admitted that the player-dealer position did not  
13 continuously and systematically rotate and that Defendants regularly banked games.

14 Casino Royale’s managers, James Kouretas and Karen Kouretas, testified that the player-  
15 dealer position did not rotate during games played at the cardroom, and instead commonly  
16 remained with third-party proposition player Pacific Gaming for more than two consecutive  
17 hands. Mr. Kouretas testified that Casino Royale’s practice was merely to offer the player-dealer  
18 position to other players at the table, and not to require that it rotate. *See* section III, *supra*. Mr.  
19 Kouretas agreed that “the third-party provider could just bank the game all day and all night if  
20 none of the other players wanted to accept the offer” and testified that “that’s how the business  
21 ran at Casino Royale.” *Id.* Ms. Kouretas testified that “we would bank the game, the third party  
22 [proposition player]” and that Casino Royale ignored its own written policies requiring the game  
23 to stop if players refused to allow the player-dealer position to continuously and systematically  
24 rotate. *Id.* Pacific Gaming’s owner and PMQ witness, Lori Suson, admitted that Pacific Gaming  
25 regularly occupied the player-dealer position and had *never* witnessed Casino Royale abiding by  
26 its own written policy that one person cannot continually occupy the player-dealer position. *Id.*

27 Casino Royale’s paid consultants, Elijah Zuniga and Robert Lytle, made virtually the same  
28 admissions. Mr. Lytle testified that it was “rare” for another player to act as player-dealer. *Id.*

1 Mr. Zuniga admitted that the player-dealer position consistently remained with the third-party  
2 proposition player and did not rotate among players in games played at the cardroom. *See id.*  
3 Mr. Zuniga admitted that doing so conferred “an edge” or advantage on the third-party  
4 proposition player, and that “the person in the player/dealer position will win more than the  
5 player over time.” *Id.*; *see also* Ybarra Decl. Ex. D (J. Kouretas Tr.) at 34:21-23 (describing the  
6 “the role of the third-party provider” is to “bank the game” and “share in the win and the loss”).

7 These binding, party admissions are entitled to “unusual deference” in summary judgment  
8 proceedings (*see Le Bourgeois*, 68 Cal. App. 4th at 1060 n.12) and amply demonstrate that there  
9 is no issue of material fact in dispute as to Defendants’ conduct. Defendants’ admissions confirm  
10 that they ignored the law’s requirement that the player-dealer position “continuously and  
11 systematically” rotate among players. *See* Cal. Penal Code § 330.11; *Oliver*, 66 Cal. App. 4th at  
12 1408. Indeed, absent continuous and systematic rotation of the player-dealer position,  
13 Defendants’ games look nearly identical to Las Vegas-style casino games—running afoul of the  
14 Constitution’s prohibition on casinos “of the type . . . operating in Nevada and New Jersey.” Cal.  
15 Const. art. IV, § 19. Defendants thus admit to conducting<sup>3</sup> banked games in flagrant violation of  
16 the law, and concede that they used the cardroom “for the purpose of illegal gambling as defined  
17 by state law” and that “acts of illegal gambling as defined by state law . . . are held or occur”  
18 there. Cal. Penal Code § 11225(a)(1). Defendants’ illegal gambling operation is a nuisance per  
19 se under the Red Light Abatement Act. *See People v. Adult World Bookstore*, 108 Cal. App. 3d at  
20 409. Because the statutes and the case law are explicit that banking games like those conducted  
21 by Defendants are prohibited, this Court may find Defendants maintained an illegal gambling  
22 nuisance at the cardroom on the basis of their own admissions alone.

23  
24 **2. Video surveillance confirms the player-dealer position almost never  
rotated during play.**

25 Even if Defendants’ admissions were insufficient, evidence collected by Plaintiffs’

26 <sup>3</sup> Penal Code § 330 provides broadly that every person who “deals, plays, or carries on, opens, or  
27 causes to be opened, or who conducts, either as owner or employee . . . any banking or percentage  
28 game played with cards . . . is guilty of a misdemeanor.” Although Casino Royale and Pacific  
Gaming engaged in distinct conduct during the game play described herein, both Defendants’  
conduct independently falls within the expansive sweep of section 330.

1 investigators and produced in discovery confirms that the player-dealer position rarely rotated  
2 during game play at the cardroom. Plaintiffs' pre-suit investigation revealed that the player-  
3 dealer position changed hands at most *two* times out of 448 hands of play—less than 1% of the  
4 time. *See* section III, *supra*.<sup>4</sup> By any measure, that falls far short of the continuous and  
5 systematic rotation required under the law. *See Oliver*, 66 Cal. App. 4th at 1408.

6 The cardroom surveillance video confirms this practice remained unchanged even after this  
7 litigation began. Plaintiffs' consultant observed the player-dealer position rotate only 9 times out  
8 of 926 hands of play—again, less than 1% of the time. Ybarra Decl. Ex. V at 3-11. That conduct  
9 reflects an utter disregard for the rotation requirement, and confirms that Defendants conducted  
10 games “taking on all comers, paying all winners, and collecting from all losers.” *Oliver*, 66 Cal.  
11 App. 4th at 1408. Plaintiffs' investigation and Casino Royale's surveillance video provide the  
12 Court an additional basis to find Defendants maintained an illegal gambling nuisance at the  
13 cardroom.

14 **3. Defendants' contention that they offered the player-dealer position to  
15 other players at the table is no defense.**

16 Defendants contend that merely *offering* the player-dealer position to other players at the table  
17 makes what would otherwise be a banking game permissible—even if the offer is declined and  
18 the third-party proposition player continually occupies the player-dealer position. Ybarra Decl.  
19 Ex. D (J. Kouretas Tr.) at 120:13-19. Defendants rely on a December 20, 2007 letter signed by  
20 their current consultant, Robert Lytle, during his final days as the Bureau's Director of the  
21 Gambling Control Division. *Id.* Ex. M (Depo. Ex. 19) (the “Lytle Letter”).<sup>5</sup> This argument fails.

22 *First*, *Oliver* makes clear that merely offering to rotate the player-dealer position among  
23 players at the table is insufficient to render a game legal. *See Oliver*, 66 Cal. App. 4th at 1408  
24 (noting that “where players would decline their opportunity to be the player-dealer . . . the result

25 <sup>4</sup> Casino Royale's RFA responses confirm the same. *See* Ybarra Decl. Ex. K.

26 <sup>5</sup> Mr. Lytle signed the Lytle Letter days before resigning as Director and starting a cardroom  
27 consulting business. *See* Ybarra Decl. Ex. M (Lytle Tr.) at 62:13-63:10. On December 23, 2014,  
28 the Bureau filed an Accusation seeking to revoke Mr. Lytle's gambling licenses and to fine him  
for misconduct, including for the time in which he served as Director. *Id.* Ex. U at ¶¶4-15. The  
Accusation alleges Mr. Lytle improperly negotiated a private consulting contract with some of the  
very cardrooms he purported to regulate and provided false information to the Bureau. *Id.*

1 would be that one player would continuously act as player-dealer for many games”).

2       *Second*, although the Lytle Letter purports to interpret the law to mean that merely offering  
3 rotation of the player-dealer position is sufficient, the Bureau has no authority to expand the  
4 realm of legal gambling in this state. The Gambling Control Act (“GCA”) sets forth the  
5 regulatory scheme pursuant to which the Bureau operates. It expressly acknowledges that state  
6 law—not agency decision—remains the ultimate authority regarding what gambling is legal:

7                     State law prohibits commercially operated . . . banked . . . games . . .  
8                     To the extent that state law categorically prohibits certain forms of  
9                     gambling and prohibits gambling devices, nothing herein shall be  
                      construed, in any manner, to reflect a legislative intent to relax  
                      those prohibitions.

10 Cal. Bus. & Prof. Code § 19801(a); *see also* § 19806. As this Court held in overruling  
11 Defendants’ demurrer, “[t]he Gambling Control Act explicitly defers to state law regarding what  
12 gambling is ‘illegal.’” Dem. Order at 3. The Bureau has no authority to relax the state’s  
13 prohibition on banking games, through the Lytle Letter or otherwise. Thus, Defendants’  
14 contention that merely offering, but not requiring, rotation of the player-dealer position satisfies  
15 the Penal Code is without merit, and no defense to Plaintiffs’ claim.

16                     **4. This Court should enter an order permanently enjoining Defendants  
                      from further illegal conduct and assessing the maximum civil penalty.**

17       Upon the finding of a nuisance, the Red Light Abatement Act provides the Court discretion to  
18 award at least two remedies: (1) the Court may enter an injunction ordering Defendants to refrain  
19 from any further conduct causing the nuisance (*see* Cal. Penal Code §§ 11227(a)); and (2) the  
20 Court may assess a civil penalty of up to \$25,000 against each Defendant. Cal. Penal Code §  
21 11230(b). Plaintiffs request that this Court do both.

22                     **a. The Court should permanently enjoin Defendants from illegal  
                      gambling, Casino Royale’s current closure notwithstanding.**

23       Plaintiffs have established the existence of a nuisance under the Act, and the Court should  
24 permanently enjoin Defendants from engaging in further illegal gambling at the cardroom,  
25 whether under the current or future owner. Casino Royale previously represented to this Court  
26 that “[b]ecause Casino Royale is closed and will not reopen, there can be no further conduct to  
27 abate pursuant to the Red Light Abatement law.” Ybarra Decl. Ex. N at 3. But that argument is  
28

1 contrary to both the law and the undisputed facts in the record.

2 *First*, the plain language of the Act authorizes this Court to enjoin “the continuance or  
3 *recurrence*” of a nuisance, expressly contemplating a nuisance that has presently ceased but is  
4 likely to recur. Cal. Penal Code § 11227 (emphasis added). This Court should interpret the  
5 statute in accordance with its plain meaning, and against the backdrop of the Legislature’s goal in  
6 stopping “local, organized commercial, casino-style gambling from occurring” within the state.  
7 Ybarra Decl. Ex. O at WH021; *see also Harwich v. Super. Ct.*, 21 Cal. 4th 272, 276 (1999)  
8 (courts should give meaning to every word in a statute with reference to “the object to be  
9 achieved and the evil to be prevented by the legislation”).

10 *Second*, alleged voluntary abatement does not moot a claim brought under the Act. *See, e.g.*,  
11 *People ex rel. Hicks v. Sarong Gals*, 42 Cal. App. 3d at 562. To the contrary, now that Plaintiffs  
12 have presented evidence showing that acts of illegal gambling took place at the cardroom, “it [is]  
13 incumbent upon [Defendants] to present evidence showing that the nuisance has[s] been abated.”  
14 *Id.* A defendant to a Red Light Abatement Act suit cannot moot the action by merely claiming  
15 voluntary abatement occurred even prior to the filing of the lawsuit—much less following months  
16 of bad faith delay in abating the nuisance. *See People v. McGonigle*, 56 Cal. App. 2d 17, 20  
17 (1942) (alleged abatement prior to filing of complaint did not preclude court from entering order  
18 closing accused premises pursuant to the Act); *People ex rel. Bradford v. Burch*, 46 Cal. App.  
19 391, 395 (1920) (rejecting defendant’s voluntary abatement claim and upholding injunction).

20 Moreover, Defendants can make no showing of voluntary abatement here given the testimony  
21 of James Kouretas, the cardroom’s founder, and Stella Ma, the cardroom’s presumptive  
22 purchaser. Mr. Kouretas is challenging the Bureau’s November 3, 2014 Emergency Order  
23 temporarily closing the cardroom. *See* section III, *supra*. If he is successful, Defendants face no  
24 impediment to reopening the cardroom under its previous license and immediately resuming  
25 operations. Ms. Ma testified that she intends to purchase the cardroom and reopen it at its current  
26 location, offering the same games and using the same employees. *Id.* Thus, any alleged  
27 voluntary abatement by Defendants is suspect and at best likely temporary, and in any event  
28 insufficient to render Plaintiffs’ claim moot. *See McGonigle*, 56 Cal. App. 2d at 20.





1 long duration. Given that record, the court's assessment of a civil penalty was justified." *Id.* The  
2 Court also noted that Defendants' bad faith litigation tactics delayed abatement of the nuisance,  
3 providing additional grounds for the award of penalties. *Id.*

4 Here, Defendants admit to egregious violation of California's prohibition on banked card  
5 games for at least 2013 and 2014, if not longer (*see* section III, *supra*). Defendants admit that  
6 their practice violated their own written policies, and only ceased their illegal gambling activities  
7 after being closed by the Bureau for other legal violations. *Id.* Moreover, Defendants have  
8 aggressively litigated this action, bringing duplicative, costly discovery motions, ignoring their  
9 duty to produce documents, and refusing to pay sanctions awarded Plaintiffs by the referee, as  
10 well as Defendants' share of the referee's fees.<sup>7</sup> In light of the "great severity and long duration"  
11 of the nuisance maintained by Defendants, and their bad faith delay in abating the nuisance,  
12 Plaintiffs request that this Court assess the maximum penalty of \$25,000 against each Defendant.

### 13 VII. CONCLUSION

14 The Court should grant summary judgment in favor of Plaintiffs, permanently enjoining  
15 Defendants from conducting banked games at the cardroom and assessing against them each the  
16 maximum civil penalty of \$25,000.

17  
18 Dated: March 24, 2015

KEKER & VAN NEST LLP

19  
20 By: 

R. ADAM LAURIDSEN

Attorneys for Plaintiffs NICOLE  
WHITEHOUSE, JOHNNIE MATRANGA,  
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21  
22  
23  
24  
25  
26 <sup>7</sup> On November 25, 2014, the Court entered the Hon. Thomas M. Cecil's ruling on Plaintiffs'  
27 sanctions request as an order, awarding Plaintiffs \$24,561 to be paid by Casino Royale within 30  
28 days. *See* Dkt. 288. Casino Royale never paid that sanctions award and ignored Plaintiffs'  
request that it do so. Casino Royale also failed to comply with this Court's order for payment of  
the referee's fees, which totaled \$10,132.50 as of December 31, 2014. *See* Ybarra Decl. Ex. T.