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

12 NICOLE WHITEHOUSE, JOHNNIE
13 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.
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Case No. 34-2014-00161427

**SEPARATE STATEMENT 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.

Pursuant to California Code of Civil Procedure § 437c(b)(1) and California Rule of Court 3.1350(d), Plaintiffs Nicole Whitehouse, Cherlyn Ortiz, Johnnie Matranga, and John Fierro (“Plaintiffs”) submit this Separate Statement of Undisputed Material Facts in Support of Plaintiffs’ Motion for Summary Judgment against Defendants Sacramento Casino Royale, LLC (“Casino Royale”) and Pacific Gaming Services, LLC (“Pacific Gaming”) (collectively, “Defendants”). The evidence cited in this Separate Statement is set forth in the Declaration of Michelle Ybarra (“Ybarra Decl.”) and the exhibits attached thereto, all filed concurrently herewith.

UNDISPUTED MATERIAL FACTS WARRANTING SUMMARY JUDGMENT

Plaintiffs’ Undisputed Material Facts and Supporting Evidence	Defendants’ Response and Supporting Evidence
<p>1. Defendant Sacramento Casino Royale (“Casino Royale”) is a licensed gambling establishment that operated the Casino Royale cardroom inside the Red Lion Hotel at 500 Leisure Lane, Sacramento, California until November 3, 2014.</p> <p>Ybarra Decl.¹ Ex. A, ¶¶16, 49 (Def. Casino Royale’s Answer to Plaintiffs’ Complaint).</p> <p>Ybarra Decl. Ex. B (Nov. 3, 2014 Emergency Order).</p>	
<p>2. Between at least March 11, 2014 and November 3, 2014, Casino Royale offered variations of blackjack, baccarat, and pai gow for play at the cardroom.</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.)² at 33:20-25.</p>	

¹ “Ybarra Decl.” refers to the Declaration of Michelle Ybarra in Support of Plaintiffs’ Motion for Summary Judgment, filed concurrently herewith.

² “J. Kouretas Tr.” refers to the certified transcript of the deposition of James Kouretas, taken on November 19, 2014, testifying as a corporate designee for Defendant Casino Royale pursuant to California Code of Civil Procedure § 2025.230.

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
<p>3. On November 3, 2014, the Bureau of Gambling Control ("the Bureau") issued an Emergency Order requiring Casino Royale to temporarily cease all gambling-related activities.</p> <p>Ybarra Decl. Ex. B (Nov. 3, 2014 Emergency Order).</p>	
<p>4. On November 3, 2014, the California Gambling Control Commission issued an Accusation against Casino Royale and its managing members pursuant to which the Bureau seeks to revoke the licenses of both Casino Royale and its managing members.</p> <p>Ybarra Decl. Ex. C (Nov. 3, 2014 Accusation).</p>	
<p>5. Casino Royale has challenged the Bureau's efforts to revoke its license.</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 68:12-69:2.</p>	
<p>6. Stella Ma, a potential buyer of the cardroom, testified that she is "very interested" in purchasing the cardroom because "of the fact that it's inside a hotel . . . It's a very attractive point for me. The fact it's inside a hotel means once I purchase it, the operation from that point on will be easy."</p> <p>Ybarra Decl. Ex. E (Ma Tr.)³ at 41:15-24.</p>	

³ "Ma Tr." refers to the certified transcript of the deposition of Stella X.Y. Ma, taken on January 14, 2014, testifying pursuant to a Deposition Subpoena for Personal Appearance and Production of Documents and Things.

<p>1 Plaintiffs' Undisputed Material Facts and 2 Supporting Evidence</p>	<p>Defendants' Response and Supporting Evidence</p>
<p>3 7. Ms. Ma testified that she intends to 4 reopen the cardroom under the name 5 "California Casino Royale" at the same 6 location: 7 "Q. If you do go through and purchase the 8 casino, would you like to reopen at the hotel? 9 A. Yes. 10 Q. And what will the name of the casino be? 11 A. My company's name. This name. 12 California Casino Royale. 13 Q. So the name of the casino will be the same 14 as the name of your company; is that correct? 15 A. Yes. Because Jim's name was Sacramento 16 and it's also called Casino Royale, so his ads 17 inside the Red Lion Hotel has been Casino 18 Royale LLC, same name, my thought was I can 19 continue to use the same advertisement, rather 20 than using new ones. That would save me 21 hassle." 22 Ybarra Decl. Ex. E (Ma Tr.) 63:8-22.</p>	
<p>18 8. Ms. Ma testified that she intends to use 19 the same employees from Casino Royale in her 20 new cardroom: 21 "Q. So your intention at the beginning is to 22 maintain the same employees from Casino 23 Royale in your new casino, correct? 24 A. I think that's right. That's my intention. I 25 am going to hire a good general manager to – 26 to run the entire thing. Anyway, that's my 27 plan." 28 Ybarra Decl. Ex. E (Ma Tr.) at 61:15-20.</p>	
<p>27 9. Ms. Ma testified that she intends to 28 offer the same games that Casino Royale offered:</p>	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
<p>“Q. Ms. Ma, in –in the event that you purchase the casino and reopen in the hotel, will you offer the game of blackjack? A. (Through Interpreter) Whatever the casino has right now. Whatever cardroom has right now.” Ybarra Decl. Ex. E (Ma Tr.) at 66:15-20.</p>	
<p>10. Pacific Gaming has provided third-party proposition player services to Casino Royale since at least October 2013. Ybarra Decl. Ex. G (Suson Tr.)⁴ at 30:14-23. Ybarra Decl. Ex. F (Casino Royale/Pacific Gaming Contract) at PGS00059.</p>	
<p>11. Pursuant to the parties' contract, Pacific Gaming has the exclusive right to provide third-party proposition player services at any table operating Casino Royale's California games. In exchange for this exclusive opportunity, Pacific Gaming pays Casino Royale a monthly fee. Ybarra Decl. Ex. F at PGS00059, PGS00063 (Casino Royale/Pacific Gaming Contract).</p>	
<p>12. Each time Pacific Gaming provides Casino Royale proposition-player services in any controlled game at the cardroom, it pays Casino Royale a collection fee. Ybarra Decl. Ex. F at PGS00059-60; Ex. D (J.</p>	

⁴ “Suson Tr.” refers to the certified transcript of the deposition of Lori Suson, taken on January 22, 2015, testifying as a corporate designee for Defendant Pacific Gaming pursuant to California Code of Civil Procedure § 2025.230.

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
Kouretas Tr.) at 34:21-25; Ex. G (Suson Tr.) at 46:6-25.	
<p>13. On October 11, 2012, Ms. Suson emailed Mr. Kouretas and other supervisors, stating that:</p> <p>"I have also come to you about the dealers making sure that the bank gets passes [sic] every two hands. . . . I want the banker to instruct the dealers to follow the rules of passing the bank every two hands."</p> <p>Ybarra Decl. Ex. D (Depo. Ex. 3).</p>	
<p>14. On August 5, 2013, Casino Royale manager Michelle Greene circulated a memorandum to staff, reminding them that:</p> <p>"The bank must be systematically rotated around the table. If there 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."</p> <p>Ybarra Decl. Ex. D (Depo. Ex. 5).</p> <p>Ybarra Decl. Ex. D (Depo Ex. 6).</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 96:1-5.</p>	
<p>15. A memo dated April 10, 2014 from "Karen Kouretas / Casino Royale Headquarters", and addressed to "All California Games Employees" and to Defendant Pacific Gaming" states that</p> <p>"Effective immediately, and in accordance with Casino Royale's previously established Standards of Conduct and Dealer Guidelines, Policies, and Procedures (*of which the applicable passage is presented below,) <i>there</i></p>	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
<p><i>shall be zero tolerance for failure to comply with rotating and offering the Player/Dealer position.</i></p> <p>*“The Player/Dealer position must rotate in a continuous and systematic fashion, and cannot be occupied by one person for more than two consecutive hands. There must be an intervening Player/Dealer so one person cannot continually occupy the position and the “bank” hand within the meaning of OLIVER V. COUNTY OF LOS ANGELES (1988) 66 Cal. App. 4th 1397, 1408-1409. . . .”</p> <p>Ybarra Decl. Ex. H (Depo. Ex. 7) (emphasis in original).</p>	
<p>16. The Dealer’s Manual instructs with respect to the play of blackjack:</p> <p>“(If the same person has already held the player/dealer position twice) rotate the player/dealer clockwise to the next position on the table. If there is no person that intervenes on the player/dealer’s position, the game will “broken” or stopped as required by the California Penal Code.”</p> <p>Ybarra Decl. Ex. D, H (Depo. Ex. 13) at 11, ¶16 (emphasis added).</p>	
<p>17. Plaintiffs’ investigators, the Mason Investment Group (“MIG”) visited the Casino Royale cardroom on eight separate occasions spanning a one-month period during March and April 2014. Over the course of those visits, MIG observed or participated in 448 games of blackjack, pai gow, and baccarat, during which Pacific Gaming occupied the player-dealer position for all but two hands of play.</p>	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
Ybarra Decl. Ex. I (April 10, 2014 Declaration of Eric Mason In Support of Plaintiffs' Ex Parte Application) at ¶¶4-13; Ex. K (Casino Royale's Responses to Plaintiffs' First Set of RFAs).	
18. Casino Royale employee Keith Abid testified that he reviewed surveillance footage of gameplay that was observed or participated in by MIG, and that out of all the hands MIG observed or participated in, a player other than Defendant Pacific Gaming assumed the player-dealer position only "on one occasion." Ybarra Decl. Ex. J (Abid Tr.) ⁵ at 54:4 – 55:12.	
19. Casino Royale admits in its responses to Plaintiffs' First Set of Requests for Admission ("RFAs") that Pacific Gaming occupied the player-dealer position during all but two hands that MIG observed or participated in. Ybarra Decl. Ex. K at 4-9 (Response to RFA Nos. 4-13).	
20. James Kouretas, a licensed attorney and the managing member of Casino Royale, founded the cardroom and testified that he is responsible for the cardroom's compliance with the law. Ybarra Decl. Ex. D (J. Kouretas Tr.) at 9:25-	

⁵ "Abid Tr." refers to the certified transcript of the deposition of Keith Abid, taken on December 5, 2014, testifying as a corporate designee for Defendant Casino Royale pursuant to California Code of Civil Procedure § 2025.230.

1 2 3 4 5 6 7 8 9	Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
10	10:1; 10:7-11; 14:13-25; 106:1-3.	
11 12 13 14 15 16 17 18 19 20 21	<p>21. Mr. Kouretas testified that the Casino Royale “dealer was required to <i>offer</i> the bank” to other players at the table, but if no player accepts the bank, “[t]hen the third-party provider would act as the . . . default banker.”</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 50:8-11.</p>	
22 23 24 25 26 27 28	<p>22. Mr. Kouretas testified that he understood compliance with the law required only that the bank be offered, even if it never rotated:</p> <p>“Q. Okay. With that distinction in mind, the distinction between merely offering it and in fact having it rotate, did you understand that the law required that the bank in fact rotate or that it was sufficient to offer it even if it never rotated?</p> <p>A. It was my understanding as long as the bank was offered, okay, that was adequate.</p> <p>Q. So it was your understanding that the bank didn't have to in fact rotate as long as it had been offered?</p> <p>A. Right.”</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 56:3-12.</p>	
29 30 31 32 33 34 35 36 37 38	<p>23. Mr. Kouretas testified that “the role of the third-party provider” is to “bank the game, so to speak. They share in the win and the loss.”</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 34:21-23.</p>	
39	24. Mr. Kouretas testified that it was “perfectly fine” to offer games in which the	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
<p>player-dealer never rotated away from the third-party proposition player:</p> <p>“Q. All right. And if [customers] didn’t choose to bank, from your perspective it was perfectly fine and legal if the bank never rotated?”</p> <p>A. Well, again, I ask what you mean by “rotated.”</p> <p>Q. Move from someone other than the TPP.</p> <p>A. I think that’s perfectly fine.</p> <p>Q. So if the dealer offers the bank and no one takes it all day long, it’s perfectly fine to offer those games?</p> <p>A. That’s my understanding.”</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 58:16-25.</p>	
<p>25. Mr. Kouretas testified as follows:</p> <p>“Q: Okay. So if all the players at the table said no to the offer and the player/dealer position did not rotate or change, then that was fine with Casino Royale?</p> <p>A: Yes.”</p> <p>Ybarra Decl. Ex. D (J. Kouretas Tr.) at 121:19-22.</p>	
<p>26. Mr. Kouretas testified his understanding of what the law requires is inconsistent with the April 10, 2014 memo (Depo. Ex. 7):</p> <p>“Q. And do you have –do you have an understanding as to whether what’s set forth on Exhibit 7 in this indented paragraph is a correct statement of the law?</p> <p>Mr. Kohls: Same objection.</p> <p>A. It doesn’t exactly comply with what I understand, but my understanding has always</p>	

<p>1 Plaintiffs' Undisputed Material Facts and 2 Supporting Evidence</p>	<p>Defendants' Response and Supporting Evidence</p>
<p>3 been that we had to offer the bank every two 4 hands. And if no one took it, then the default 5 banker could bank the game. 6 Q. And by "the default banker," you're 7 referring to the third-party provider? 8 A. Yes" 9 10 Ybarra Decl. Ex. D (J. Kouretas Tr.) at 106:4- 11 14.</p>	
<p>12 27. Mr. Kouretas testified that merely 13 offering the player-dealer position to players 14 during a game—even if no one accepts—is 15 sufficient to satisfy the Penal Code: 16 "Q. So your understanding was that the Penal 17 Code could be satisfied by offering the deal? 18 A. Yes. 19 Q. And if no one accepted it and the 20 player/dealer remained the same throughout an 21 extended period of time that was fine? 22 A. Yes." 23 24 28. Ybarra Decl. Ex. D (J. Kouretas Tr.) at 25 120:13-19.</p>	
<p>26 29. Mr. Kouretas testified that Casino 27 Royale's "business" involved the third-party 28 provider to occupying the player-dealer position "all day and all night": "Q. So your understanding, the third-party provider could just bank the game all day and all night if none of the other players at the game wanted to accept the offer? A. That was my understanding and that's how the business ran at Casino Royale." Ybarra Decl. Ex. D (J. Kouretas Tr.) at 106:15-</p>	

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30. Karen Kouretas, the Assistant General Manager for Casino Royale, testified that, during the California games, "if no one accepted the bank, the third-party proposition player would continue to bank the game." Ybarra Decl. Ex. H (K. Kouretas Tr. ⁶) at 144:6-11.		
31. Ms. Kouretas admitted that Casino Royale's practice in 2013 and 2014 was as follows: "Q. So is it your understanding that that was Casino Royale's practice in 2013 and 2014 where the bank – where if no one accepted the bank, the third-party proposition player would continue to bank the game? A. I would – that's my understanding is that we would bank the game, the third party." Ybarra Decl. Ex. H (K. Kouretas Tr.) at 144:6-11).		
32. Ms. Kouretas testified that "we don't stop the game because nobody wants to bank it" but instead "it goes back to the third party" and that the third-party proposition player would "continually" act as the bank: "Q. So you're saying that pursuant to [the Casino Royale Dealer's Manual], if no person intervenes in the player/dealer position and accepts the bank the game would be broken or stopped?"		

⁶ "K. Kouretas Tr." refers to the certified transcript of the deposition of Karen Kouretas, taken on December 1, 2014, testifying as a corporate designee for Defendant Casino Royale pursuant to California Code of Civil Procedure § 2025.230.

1 2 3 4 5 6 7 8 9 10	<p>Plaintiffs' Undisputed Material Facts and Supporting Evidence</p> <p>A. That is not my understanding. Q. That did not take place? A. I – that's not my understanding. 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."</p> <p>Ybarra Decl. Ex. H (K. Kouretas Tr.) at 141:6-16; 145:15-24 (emphasis added).</p>	<p>Defendants' Response and Supporting Evidence</p>
11 12 13 14 15 16 17 18 19 20 21	<p>33. Casino Royale's consultant, Elijah Zuniga, testified that the third-party provider at Casino Royale regularly banks Casino Royale's blackjack games:</p> <p>"Q. Most of the time the player/dealer position, regardless of how often it was offered, remained with the third-party provider and did not change hands continually and systematically among the player at the table; correct? A. In blackjack? Q. Yes. A. Correct."</p> <p>Ybarra Decl. Ex. L (Zuniga Tr.⁷) at 55:6-13.</p>	
22 23 24 25 26	<p>34. Mr. Zuniga admitted that "it [was] common in baccarat games that the player/dealer position remain[ed] with the third-party provider for multiple hands during play."</p>	

⁷ "Zuniga Tr." refers to the certified transcript of the deposition of Elijah Zuniga, taken on December 29, 2014, testifying as a corporate designee for Defendant Casino Royale pursuant to California Code of Civil Procedure § 2025.230.

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
Ybarra Decl. Ex. L (Zuniga Tr.) at 59:2-9.	
35. Mr. Zuniga testified that Casino Royale's practices with respect to bank rotation were the same both before and after Plaintiffs filed their Complaint. Ybarra Decl. Ex. L (Zuniga Tr.) at at 60:3-13.	
36. Mr. Zuniga testified that "there's an edge on every game within a cardroom" such that "the person in the player/dealer position will win more than the player over time." He testified that "[I]f you look at it from a player's point of view, you want to take the player/dealer position because if you've got enough money to bank the game and stay there for a while, you're going to do okay. . . it's how everything else works, how Vegas was built." Ybarra Decl. Ex. L (Zuniga Tr.) at 22:1-15; 21:21-22:2.	
37. Mr. Zuniga testified as follows: "Q. And when a third-party provider is continually banking a game, they're the recipient of this edge or this advantage, correct? A. Correct." Ybarra Decl. Ex. L (Zuniga Tr.) at 22:16-19.	
38. Casino Royale's consultant, Robert Lytle, agreed that the third party would "commonly" bank the blackjack games without any other player intervening: "Q. In blackjack, would you say that it was	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
<p>commonly a situation where the third-party proposition player would bank the hands of the game?</p> <p>A. Yes.</p> <p>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?</p> <p>A. I would say most of the time.”</p> <p>Ybarra Decl. Ex. M (Lytle Tr.⁸) at 32:6-13.</p>	
<p>39. 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.”</p> <p>Ybarra Decl. Ex. M (Lytle Tr.) at 32:14-19.</p>	
<p>40. Mr. Lytle admitted that these practices continued through May and June, 2014.</p> <p>Ybarra Decl. Ex. M (Lytle Tr.) at 32:20-33:10.</p>	
<p>41. Lori Suson admitted that in Casino Royale’s California games, Pacific Gaming regularly occupies the player-dealer position:</p> <p>“Q. Would you agree that Pacific Gaming as a third-party banker regularly occupies the player/dealer position?</p> <p>A. Regularly. Yes.</p> <p>Q. And does that apply to the blackjack</p>	

⁸ “Lytle Tr.” refers to the certified transcript of the deposition of Robert Lytle, Jr., taken on December 5, 2014, testifying as a corporate designee for Defendant Casino Royale pursuant to California Code of Civil Procedure § 2025.230.

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
games? Q. Yes. Q. And the pai gow games? A. Yes. Q. And the baccarat game? A. Yes.” Ybarra Decl. Ex. G (Suson Tr.) at 60:3-12.	
42. Ms. Suson testified that Casino Royale's practices with respect to bank rotation were the same both before and after Plaintiffs filed their Complaint: “Q. And in your experience and observations and understanding of Casino Royale's practices, did their practices change at all before or after the filing of the complaint? A. No. Q. So the practice of their understanding of the rotation requirement did not change? A. They had the same procedures, as far as I know. Q. And those procedures were to offer the bank around the table with some exceptions when they didn't do that? A. Right. Q. And to allow Pacific Gaming to regularly act as the bank if everyone turned the bank down; correct? A. Yes. Q. And that applied to the blackjack games; correct? A. Yes. Q. The pai gow games? A. (Nods head.)	

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Plaintiffs' Undisputed Material Facts and Supporting Evidence	Defendants' Response and Supporting Evidence
Q. And the baccarat games? A. Yes.” Ybarra Decl. Ex. G (Suson Tr.) at 62:12-63:12.	
43. Ms. Suson testified that she has never seen Casino Royale follow the dictates of the April 10, 2014 memo (Depo. Ex. 7) prohibiting one person from “continually occupy[ing] the [bank] position”: “Q. Did you ever see Casino Royale follow the following policy: “There must be an intervening player/dealer so one person cannot continually occupy the position and the bank hand? A. No. I don’t know why they would even put that in here, the policy.” Ybarra Decl. Ex. G (Suson Tr.) at 53:15-20.	
44. Plaintiffs retained a consulting firm, Conroy & Associates, to conduct a randomized review of surveillance footage of the Casino Royale cardroom. Ybarra Decl. Ex. V (Conroy Report) at 3.	
45. Conroy & Associates reviewed a random sample of 15 hours of gaming footage at the cardroom, taken between March 10 and May 1, 2014, during which Pacific Gaming occupied the player-dealer position for 917 of 926 observed hands of the California games. Ybarra Decl. Ex. V at 3-11.	

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Dated: March 24, 2015

KEKER & VAN NEST LLP

By: 
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