

THE STATE OF NEW HAMPSHIRE
LOTTERY COMMISSION

IN THE MATTER OF

WIN WIN WIN, LLC, d/b/a “CONCORD CASINO”
(FAC-00074 and GOE-00079)

Docket No. Lot 23-018

**LOTTERY INVESTIGATION AND COMPLIANCE DIVISION’S
REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The New Hampshire Lottery Investigation and Compliance Division (the “Division”), by and through its attorney, John M. Formella, Attorney General, submits the following requests for findings of fact and conclusions of law:

FINDINGS OF FACT

1. Anthony M. Sanborn (“Mr. Sanborn”) resides in Bedford, New Hampshire. Division’s Ex. 49 at 4.
2. New Hampshire state representative Laurie J. Sanborn (“Rep. Sanborn”) is Mr. Sanborn’s spouse. *Id.*
3. Rep. Sanborn currently holds a Bingo and Lucky 7 license issued by the Commission. *See McDonough’s Testimony.*
4. Although Rep. Sanborn does not hold a formal position within Concord Casino, she serves as the gaming consultant for Concord Casino’s Lucky 7 machines. *See See McDonough’s Testimony; Division’s Ex. 49 at 4.*

5. Win Win Win, LLC is a New Hampshire limited liability company owned and controlled by Mr. Sanborn. *See* McDonough’s Testimony; Maloney’s Testimony; Division’s Ex. 49 at 16-17.

6. On June 14, 2019, Mr. Sanborn registered the trade name “Concord Casino” on behalf of Win Win Win, LLC. Division’s Ex. 49 at 17-18.

7. Since at least June 14, 2019, Win Win Win, LLC has continuously conducted business under its registered trade name “Concord Casino.” *See* McDonough’s Testimony; Division’s Ex. 49 at 17-18.

8. Win Win Win, LLC, d/b/a “Concord Casino” (hereinafter referred to as “Concord Casino”) holds a 2023 games of chance facility license (a “FAC License”) that expires on December 31, 2023. *See* McDonough’s Testimony.

9. Concord Casino holds a 2023 game operator employer license (a “GOE License”) that expires on December 31, 2023. *See id.*

10. The Best Revenge, LLC (“TBR”) is a New Hampshire limited liability company owned and controlled by Mr. Sanborn. *See* Maloney’s Testimony; McDonough’s Testimony; Division’s Ex. 49 at 165-66.

11. TBR owns the building and land at 67 North Main Street, Concord, New Hampshire (the “TBR Building”). *See* Maloney’s Testimony; McDonough’s Testimony.

12. Concord Casino offers games of chance to and plays games of chance against the public for profit inside the TBR Building. *See* Maloney’s Testimony; McDonough’s Testimony.

13. The Draft, LLC (“The Draft”) is a New Hampshire limited liability company owned and controlled by Anthony M. Sanborn. *See, e.g.*, Maloney’s Testimony; McDonough’s Testimony; Division’s Ex. 49 at 163-64.

14. The Draft operates a bar and restaurant inside the TBR Building. *See* Maloney’s Testimony; Respondent’s Ex. 22.

15. Concord Commitment, LLC is a New Hampshire limited liability company owned and controlled by Anthony M. Sanborn. *See* Division’s Ex. 49 at 171-72.

16. Concord Commitment, LLC is developing a proposed 43,000-square-foot casino entertainment complex at Break O Day Drive in Concord, New Hampshire. Division’s Ex. 49 at 111.

17. Between December 1, 2021, and February 19, 2022, Concord Casino applied for and accepted the proceeds of an EIDL in the total principal amount of \$844,000. *See* McDonough’s Testimony; Maloney’s Testimony; Division’s Ex. 3; Division’s Ex. 20; Division’s Ex. 23 at 10; Division’s Ex. 28 at 4; Division’s Ex. 29 at 2.

18. Under “Trade Name” on Concord Casino’s EIDL application, the application instructed and required Mr. Sanborn to enter Concord Casino’s registered trade name “if different from [its] legal name.” *See* Division’s Ex. 3 at 1.

19. Despite that requirement and instruction, Mr. Sanborn omitted Concord Casino’s trade name from its EIDL application. *See* Division’s Ex. 3 at 1

20. Instead, Mr. Sanborn chose to reenter Concord Casino’s legal name, “Win Win Win, LLC” under “Trade Name.” *See* Division’s Ex. 3 at 1.

21. Under “Business Activity” on Concord Casino’s EIDL application, Mr. Sanborn entered “Miscellaneous Services.” Division’s Ex. 3 at 2.

22. Under “NAICS Code” on Concord Casino’s EIDL application, Concord Casino and Mr. Sanborn entered “54618.” Division’s Ex. 3 at 2.

23. NAICS code “54618” is for businesses engaged in “Other Management Consulting Services.” *See* NAICS Association, NAICS Code Description. <https://www.naics.com/naics-code-description/?code=541618> (last accessed Dec. 18, 2023).

24. However, Mr. Sanborn’s 2021 federal income tax return reports Concord Casino’s NAICS code as “713200.” Respondent’s Ex. 3 at 22.

25. Mr. Sanborn’s 2022 federal income tax return also reports Concord Casino’s NAICS code as “713200.” Respondent’s Ex. 47 at 18.

26. NAICS code “713200” is the NAICS code for businesses engaged in the “Gambling Industries.” *See* United States Bureau of Labor Statistics, Occupational Employment and Wage Statistics. https://www.bls.gov/oes/2019/may/naics4_713200.htm (last accessed Dec. 18, 2023).

27. Under the heading “Actual 2020 Gross Revenues” on Concord Casino’s EIDL application, Concord Casino and Mr. Sanborn entered “\$919,304.” Division’s Ex. 3 at 2.

28. However, Concord Casino only reported 2020 total revenue of \$296,814 to the Commission. *See* McDonough’s Testimony.

29. Under the heading “Rental Properties (Residential and Commercial) Only – Actual 2020 rents” on Concord Casino’s EIDL application, Concord Casino and Mr. Sanborn entered “\$466,300.” Division’s Ex. 3 at 3

30. However, Concord Casino’s financial records and its reports to the Commission do not include rental payments made to Concord Casino totaling “\$466,300” in 2020. *See* Division’s Ex. 23.

31. In December 2021, Concord Casino and Mr. Sanborn retained SpringWest Capital to assist them with applying for and securing an EIDL for Concord Casino. *See* Respondent’s Ex. 6 at ¶¶ 7-8.

32. In exchange for helping Concord Casino and Mr. Sanborn obtain an EIDL for Concord Casino, Concord Casino and Mr. Sanborn agreed to pay Southwest Capital Corp. a success fee equal to ten percent (10%) of Concord Casino’s EIDL proceeds. *See* Division’s Ex. 15.

33. Southwest Capital’s president, Michael Evans, initially raised concerns with Mr. Sanborn about Concord Casino’s eligibility for an EIDL. *See* Respondent’s Ex. 6 at ¶¶ 5-6.

34. However, Mr. Sanborn eventually convinced Mr. Evens that New Hampshire’s charitable gaming facilities are not casinos because they provide a portion of their revenues to charity. *See* Respondent’s Ex. 6 at ¶ 6.

35. Based on Mr. Sanborn’s representations and his own “research,” Mr. Evens eventually concluded that Concord Casino was a “charity-consulting company” eligible for EIDL funding. *See* Respondent’s Ex. 6 at ¶¶ 6-7

36. According to Mr. Evens's affidavit, Mr. Sanborn provided all the answers to the SBA's questions during the application process, and Mr. Evens inputted them into Concord Casino's EIDL application. *See* Respondent's Ex. 6 at ¶¶ 7-8

37. At the time Mr. Sanborn retained Mr. Evens for EIDL consulting services, Mr. Evens had only "over one year of experience consulting on SBA funding." Respondent's Ex. 6 at ¶ 4.

38. Concord Casino received its first EIDL disbursement of \$499,900 (\$500,000 less a \$100 service fee) into its operating account at Merrimack Savings Bank ending in "3544" (the "Operating Account") on January 4, 2022. McDonough's Testimony; Division's Ex. 23 at 10; Division's Ex. 29 at 2.

39. Before receiving its initial EIDL disbursement, Concord Casino's Operating Account balance was only \$917.56 on January 4, 2022. *See* McDonough's Testimony; Division's Ex. 23 at 10; Division's Ex. 29 at 2.

40. Soon after receiving its initial EIDL disbursement of \$499,900, Concord Casino began making large payments from its Operating account for rent, advertising, and equipment purchases. *See* McDonough's Testimony; Division's Ex. 29 at 2; Division's Ex. 23 at 10-17.

41. On January 18, 2022, Concord Casino and Mr. Sanborn initiated a wire transfer of \$48,750 from Concord Casino's Operating Account to Charlie Cook of RaceCarsForRent, LLC of Braselton, GA, for the purchase of (i) a 2006 Porsche 987 Cayman S race car, and (ii) a set of four wheels for the Porsche race car. *See* McDonough's Testimony; Division's Ex. 4; Division's Ex. 23 at 10; Division's Ex. 29 at 3.

42. Concord Casino and Mr. Sanborn booked the purchase of the 2006 Porsche 987 Cayman S race car and wheels in Concord Casino's accounting records as "equipment" purchases made in the ordinary course of Concord Casino's charitable gaming business. *See McDonough's Testimony; Division's Ex. 23 at 10; Division's Ex. 29 at 3.*

43. On January 18, 2022, Concord Casino paid SouthWest Capital Corp. a success fee of \$10,000 via check no. 20219 for its assistance in obtaining Concord Casino's EIDL. *See McDonough's Testimony; Division's Ex. 15; Division's Ex. 23 at 10.*

44. Concord Casino and Mr. Sanborn booked the \$10,000 success fee paid to SouthWest Capital Corp. as a consulting fee paid in the ordinary course of Concord Casino's charitable gaming business. *See McDonough's Testimony; Division's Ex. 15; Division's Ex. 23 at 10.*

45. On February 2, 2022, Concord Casino and Mr. Sanborn initiated a wire transfer of \$52,500 from Concord Casino's Operating Account, containing the EIDL proceeds, to KMAN Racing, LLC of Johns Creek, GA, for the purchase of a 2011 Porsche 987 Cayman S Interseries race car. *See McDonough's Testimony; Division's Ex. 5; Division's Ex. 23 at 10; Division's Ex. 29 at 3.*

46. Concord Casino and Mr. Sanborn booked the 2011 Porsche 987 Cayman S Interseries race car purchase in Concord Casino's accounting records as an "equipment" purchase made in the ordinary course of Concord Casino's charitable gaming business. *See McDonough's Testimony; Division's Ex. 23 at 10; Division's Ex. 29 at 3*

47. Concord Casino received its second EIDL disbursement of \$344,000 into its Operating Account on February 15, 2022. McDonough's Testimony; Division's Ex. 23 at 11; Division's Ex. 29 at 2.

48. On February 22, 2022, Concord Casino paid SouthWest Capital Corp. another success fee of \$6,880 for its assistance in obtaining the second tranche of Concord Casino's EIDL. *See* McDonough's Testimony; Division's Ex. 23 at 11.

49. Concord Casino and Mr. Sanborn booked the \$6,880 success fee paid to SouthWest Capital Corp. as a consulting fee paid in the ordinary course of Concord Casino's charitable gaming business. *See* McDonough's Testimony; Division's Ex. 23 at 11.

50. On or about April 26, 2022, Concord Casino and Mr. Sanborn initiated a wire transfer of \$80,600 from Concord Casino's Operating Account containing the EIDL proceeds to Taurino Racing, LLC d/b/a "Capristo Exhaust USA" of Riviera Beach, FL, for the purchase of (i) a 2008 F430 Ferrari Challenge race car chassis (\$80,000) and (ii) two sets of used tire rims (\$600). *See* McDonough's Testimony; Division's Ex. 6; Division's Ex. 23 at 13; Division's Ex. 29 at 3.

51. Concord Casino and Mr. Sanborn purchased the 2008 F430 Ferrari Challenge race car chassis and used tire rims as surprise gifts for Rep. Sanborn. Division's Ex. 6 at 13.

52. Still, Concord Casino and Mr. Sanborn booked the purchase of the 2008 F430 Ferrari Challenge race car chassis and two sets of used tire rims in Concord Casino's accounting records as "equipment" purchases made in the ordinary course of Concord

Casino's charitable gaming business. *See* McDonough's Testimony; Division's Ex. 23 at 13; Division's Ex. 29 at 3.

53. Between April 15, 2022, and May 5, 2022, Concord Casino and Mr. Sanborn initiated a series of transfers by check – check no. 20261 for \$10,000 on or about April 15, 2022, check no. 20265 for \$20,000 on or about April 25, 2022, and check no. 20268 for \$15,000 on or about May 5, 2022, totaling \$45,000 from Concord Casino's Operating Account, containing the EIDL proceeds to Peter Dawe of Dawe's Motorsports of Stroudsburg, PA, for the purchase of automotive engines, shocks, other automotive parts, or services (the "Autoparts"). *See* McDonough's Testimony; Division's Ex. 9; Division's Ex. 23 at 12-13; Division's Ex. 29 at 3.

54. Concord Casino and Mr. Sanborn booked the Autoparts purchases in Concord Casino's accounting records as "advertising" expenses incurred in the ordinary course of Concord Casino's charitable gaming business. *See* McDonough's Testimony; Division's Ex. 23 at 12-13; Division's Ex. 29 at 3.

55. On July 1, 2022, Concord Casino and Mr. Sanborn initiated a transfer by check no. 20305 of \$14,600 from Concord Casino's Operating Account, containing the EIDL proceeds to Geotechnical Services, Inc. of Weare, NH, for the purchase of professional services for and related to the development of a new casino entertainment facility in Concord, NH, owned by Concord Commitment. *See* McDonough's Testimony; Division's Ex. 8; Division's Ex. 23 at 15; Division's Ex. 29 at 3.

56. Concord Casino and Mr. Sanborn booked the \$14,600 payment to Geotechnical Services, Inc. in Concord Casino's accounting records as "outside services"

incurred in the ordinary course of Concord Casino's charitable gaming business. *See* McDonough's Testimony; Division's Ex. 23 at 15.

57. On July 8, 2022, Concord Casino and Mr. Sanborn initiated a transfer by check no. 20315 of \$14,206.78 from Concord Casino's Operating Account, containing the EIDL proceeds to TFMoran, Inc. of Bedford, NH, for the purchase of professional services for and related to the development of a new casino entertainment facility planned for Concord, NH, owned by Concord Commitment. *See* McDonough's Testimony; Division's Ex. 7; Division's Ex. 23 at 15; Division's Ex. 29 at 3.

58. Concord Casino and Mr. Sanborn booked the \$14,206.78 payment to TFMoran, Inc. in Concord Casino's accounting records as "leasehold improvements" incurred in the ordinary course of Concord Casino's charitable gaming business. *See* McDonough's Testimony; Division's Ex. 23 at 15; Division's Ex. 29 at 3.

59. On or about August 4, 2022, Mr. Sanborn caused Concord Casino to transfer \$150,000 from its Operating Account, containing the EIDL proceeds, to his personal account at Ledyard Bank. *See* McDonough's Testimony; Division's Ex. 23 at 1, 16; Division's Ex. 29 at 4.

60. Eventually, Mr. Sanborn moved \$105,000 of those proceeds into a certificate of deposit at Ledyard Bank, payable to him on maturity. *See* McDonough's Testimony; Division's Ex. 36.

61. Despite transferring the entire \$150,000 to Mr. Sanborn, Concord Casino's books show that the \$105,000 certificate of deposit at Ledyard Bank is an asset of Concord Casino. *See* McDonough's Testimony; Maloney's Testimony; *see also* Division's

Ex. 28 at 2 (showing “\$105,264” at Ledyard Bank as an asset of Concord Casino on Oct. 3, 2022); *cf.* Division’s Ex. 23 at 1 (showing “\$150,000” at Ledyard Bank as an asset of Concord Casino on Sept. 22, 2022).

62. The Loan Authorization and Agreement (the “Loan Agreement”) between Concord Casino and the SBA provides, in part, that Concord Casino “will use all the proceeds of [the EIDL] solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31, 2020[,] and continuing thereafter.” Division’s Ex. 39 at 2.

63. Under the Loan Agreement, Concord Casino certified that “no fees have been paid, directly or indirectly, to any representative (attorney, accountant, etc.) for services provided or to be provided in connection with applying for or closing this [l]oan, other than those reported on the [EIDL] [a]pplication.” Division’s Ex. 39 at 5.

64. Beginning on September 17, 2018, and running until at least September 17, 2022, Concord Casino leased its casino gaming areas in the TBR Building from TBR under that certain lease agreement dated September 17, 2018 (the “2018” Lease). *See* McDonough’s Testimony; Division’s Ex. 18.

65. The term of the 2018 Lease is five (5) years. Division’s Ex. 18 at ¶ 3.

66. The Annual Base Rent due under the 2018 Lease is six thousand dollars (\$6,000) annually, payable in monthly installments of five hundred dollars (\$500) each. Division’s Ex. 18 at ¶ 5.

67. Accordingly, the maximum total Annual Base Rent due under the 2018 Lease is thirty thousand dollars (\$30,000.00). *See* Division’s Ex. 18 at ¶ 5.

68. The 2018 Lease provides that the Annual Base Rent is payable for the entire casino area “[despite] the precise square footage of the [demised] [p]remises.” Division’s Ex. 18 at ¶ 5.

69. According to Concord Casino’s accounting records, between August 16, 2021, and December 31, 2022, Concord Casio reported it had paid rent to TBR totaling \$362,806.58. Respondent’s Ex. 2 at 8.

70. Concord Casino’s so-called “rent” payments to TBR shown in its accounting records for August 25, 2021 (check # 20157 for \$27,000), November 19, 2021 (check # 20189 for \$3,000), and December 21, 2021 ((check # 20220 for \$22,500) were not paid to TBR. *See* Maloney’s Testimony; Respondent’s Ex. 2 at 8.

71. Instead, those three payments were made directly to The Draft and reported on Concord Casino’s books as rent payments made to TBR. *See* Maloney’s Testimony; Respondent’s Ex. 2 at 8.

72. By at least October 13, 2021, Concord Casino had paid TBR rents exceeding \$30,000 – the total Base Annual Rent for the five-year term due under the 2018 Lease. *See* Division’s Ex. 18 at ¶ 5.

73. No rent was due to TBR between October 14, 2021, and September 17, 2022. *See* Division’s Ex. 18 at ¶ 5.

74. However, between January 1, 2022, and September 16, 2022, Concord Casino continued making irregular payments to TBR totaling \$169,906.58. *See* Maloney’s Testimony; McDonough’s Testimony; Division’s Ex. 18 at ¶ 5; Respondent’s Ex. 2 at 8.

75. On September 17, 2022, Concord Casino and TBR entered into a new lease for casino space in the TBR Building (the “2022 Lease”). *See McDonough’s Testimony; Respondent’s Ex. 24.*

76. The only difference between the 2022 Lease and the 2018 Lease is that the Annual Base Rent in the 2022 Lease was increased to \$240,000 per year. Respondent’s Ex. 24 at ¶ 5.

77. In 2022, the Division conducted an audit of Concord Casino for the period May 1, 2022, through July 31, 2022 (the “2022 Audit”). *See McDonough’s Testimony; Division’s Ex. 29.*

78. At the commencement of the 2022 Audit, the Division’s auditors transmitted an audit document request list to Concord Casino via email to Mr. Sanborn. Division’s Ex. 29 at 2.

79. Like the 2021 audit, Concord Casino responded that it did not maintain up-to-date financial statements. Division’s Ex. 29 at 2.

80. During the 2021 audit, Mr. Sanborn acknowledged that “neither a balance sheet nor an income statement [is] prepared for [Concord Casino] on a regular basis.” Division’s Ex. 30 at 13.

81. Concord Casino could not “produce subsidiary ledgers, other than a handwritten check register.” Division’s Ex. 30 at 13.

82. Concord Casino recorded payments made to credit card companies as business expenses instead of recording the actual individual expense items purchased using its or Mr. Sanborn’s credit card(s). Division’s Ex. 30 at 13.

83. Throughout the 2021 audit, the Division's auditors requested corrected income statements and balance sheets for the periods under audit. Division's Ex. 30 at 13.

84. Eventually, Concord Casino provided high-level balance sheets and income statements to the audit team for the 2021 audit. Division's Ex. 30 at 13.

85. Concord Casino's high-level 2021 balance sheets and income statements were inadequate because the Division's auditors could not "trace the flow of net income/loss from the [high-level] income statements provided to the [high-level] balance sheets provided for the same period." Division's Ex. 30 at 13.

86. Concord Casino eventually provided auditors with a balance sheet, a profit and loss statement, and a cash flow statement for the 2022 Audit. Division's Ex. 20 (Respondent's Statement of Cash Flows July 2021 – July 2022); Division's Ex. 28 (Respondent's balance sheet as of August 31, 2022); Division's Ex. 29 at 2.

87. Concord Casino also provided auditors with a transaction detail report, showing its financial transactions from January 1, 2017, through August 31, 2022. Division's Ex. 23; Division's Ex. 29 at 2.

88. Concord Casino's 2022 balance sheet reflected a \$844,000 liability noted entered as a Payroll Protection Plan loan. *See McDonough's Testimony*; Division's Ex. 29 at 2.

89. Mr. Sanborn later explained that Concord Casino's accounting records misidentified the \$844,000 loan as a Payroll Protection Plan loan. *See McDonough's Testimony*; Division's Ex. 29 at 2.

90. Instead, the loan was an EIDL in the principal amount of \$844,000. *See* McDonough's Testimony; Division's Ex. 29 at 2.

91. During the 2022 Audit, the auditors found that Concord Casino had failed to remedy the lack of compliance with the Commission's dual control requirements for revisions to source documents for cash and cash equivalents. *See* McDonough's Testimony; Division's Ex. 29 at 4; *accord* Division's Ex. 30 at 8.

92. During the 2022 Audit, the Division's auditors found multiple instances where Concord Casino's source documents or information on documents were insufficient. Division's Exhibit 29 at 5-6

93. Deficiencies included handwritten opening and closing sheets that do not have a field for time or date, numerous revisions to transactions without utilizing the one-line strike-through methodology, and illegible handwriting on multiple source documents. Division's Exhibit 29 at 5.

94. Auditors also found insufficiencies in tournament paperwork, which contained incomplete information on registration forms, and inadequate documentation of prize winners and bounty prizes awarded. Division's Exhibit 29 at 5.

95. Auditors found instances where a table's opening bank was recorded without a corresponding closing bank. Division's Exhibit 29 at 5.

96. During the 2022 Audit, the auditors found that Concord Casino had failed to remedy the source documentation compliance problems cited in Concord Casino's 2021 audit report. *See* McDonough's Testimony; Division's Ex. 29 at 6; *accord* Division's Ex. 30 at 9-11.

97. During the 2022 Audit, the auditors found that no charity was ever charged the contractual rental rate but, instead, paid rental rates based on a charity's proceeds from gaming. Division's Ex. 29 at 6-7.

98. The Division's Auditors found that the contractual rent of \$750 per game date was often reduced, but rents charged to charities were still approximately [fifty] 50% of a charity's proceeds from gaming. *See McDonough's Testimony*; Division's Ex. 29 at 6.

99. During the 2021 audit, the Division's auditors discovered that Concord Casino had improperly charged charities rental rates based on gaming revenue instead of the fixed fee established in their contracts. Division's Ex. 30 at 11-12.

100. Whether by design or coincidence, when NHLC staff analyzed the rents charged to the charities during the 2021 audit versus gaming revenues, in whole percentages, the amount consistently equaled seventeen percent (17%) of Concord Casino's monthly gaming revenue. Division's Ex. 30 at 12.

101. During the 2022 Audit, auditors found that the rents charged to charities were approximately seventeen percent (17%) of Concord Casino's monthly gaming revenue. Division's Ex. 29 at 6; *see also* Division's Ex. 30 at 11-12.

102. During the 2021 audit, the Division's auditors found that Concord Casino failed to maintain adequate written internal controls. Division's Ex. 30 at 13-14.

103. Upon review, the Division's auditors determined that several of Concord Casino's internal controls were missing or were inadequately described, explained, or both. Division's Ex. 30 at 13.

104. The Division’s auditors found Concord Casino’s accounting and finance policies and procedures inadequate. *Id.*

105. They also found Concord Casino’s exception and variance resolution and reporting controls inadequate. *Id.*

106. The auditors also found Concord Casino’s procedures related to handling player funds were inadequate. *Id.*

107. Ultimately, the Division’s auditors determined that Concord Casino had failed to adhere to the Commission’s guidance promulgated on April 21, 2021, for assessing internal controls and writing internal control documents. *Id.* at 14.

CONCLUSIONS OF LAW

1. Under N.H. Admin. R., Lot 7202.04, each game of chance offered to, or played against, the public by Concord Casino is a “game involving gambling[.]”

2. There is no constitutional or common-law right to engage in gambling or to host gambling activities at any place.

3. Despite the State’s criminal prohibition against gambling, participation in New Hampshire’s charitable gaming industry is a privilege that the Commission, on behalf of the State, may grant to or withhold from a private enterprise at its pleasure.

4. Because of the nature of the business, gambling can be abolished at any time the Legislature may deem proper to protect the public welfare.

5. Unlike a license to engage in a profession, no contract or property right is vested when the State licenses a person to participate in its charitable gaming industry.

6. A games of chance licensee must comply with all applicable laws and regulations to maintain the licensee's State-granted privilege to profit from gambling or the hosting of gambling activities.

7. Neither SouthWest Capital Corp. nor Michael Evens are experts in SBA funding or EIDL applications.

8. The SBA's regulations and procedures identify businesses that derive more than one-third of their gross annual revenue from legal gambling activities as ineligible for EIDL assistance.

9. In 2020, Concord Casino derived more than one-third of its revenues from the games of chance it offered to or played against the public.

10. In 2021, Concord Casino derived more than one-third of its revenues from the games of chance it offered to or played against the public.

11. In 2022, Concord Casino derived more than one-third of its revenues from the games of chance it offered to or played against the public.

12. Because it derives more than one-third of its revenues from the games of chance it offers to or plays against the public, Concord Casino was ineligible in 2020, 2021, and 2022 to apply for or receive EIDL assistance.

13. The SBA's regulations and procedures also identify businesses whose purpose for being is gambling (such as casinos, racetracks, poker parlors, etc.) as not eligible for EIDL assistance regardless of their ability to meet the one-third criteria established for otherwise eligible concerns.

14. Concord Casino's purpose for being is gambling – offering games of chance to, or playing games of chance against, the public for profit, even if part of that profit is shared with not-for-profit organizations.

15. Per Mr. Sanborn's 2022 and 2021 federal income tax returns, Concord Casino's purpose for being is gambling.

16. Because Concord Casino's purpose for being is gambling, it was ineligible to apply for or receive EIDL assistance in 2020, 2021, and 2022.

17. The Commission has the authority to consider any unprosecuted criminal activity occurring in any U.S. jurisdiction when considering whether to revoke a games of chance facility license or game operator employer license for just cause shown.

18. When it enacted the CARES Act, Congress did not manifest a clear purpose to preempt the historic police powers of the states to administratively discipline their wayward licensees for violations of a state's laws or regulations arising from the wrongful application for, receipt, use, or accounting of EIDL proceeds.

19. The Commission has the authority to consider any materially false statements, misrepresentations, or omissions made on any EIDL or payment protection plan ("PPP") application when considering whether to revoke a games of chance facility license or game operator employer license for just cause shown.

20. The Commission may consider any improper use of EIDL proceeds when considering whether to revoke a games of chance facility license or game operator employer license for just cause shown.

21. The Commission may consider any improper accounting of EIDL proceeds when considering whether to revoke a games of chance facility license or game operator employer license for just cause shown.

22. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when, on August 25, 2021, Concord Casino paid The Draft \$27,000, via check no. 20157, and booked the payment as a rent payment to TBR.

23. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when, on November 19, 2021, Concord Casino paid The Draft \$3,000, via check no. 20189, and booked the payment as a rent payment to TBR.

24. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when, on December 21, 2021, Concord Casino paid The Draft \$22,500, via check no. 20220, and booked the payment as a rent payment to TBR.

25. In December 2021, Concord Casino and Mr. Sanborn filed an EIDL application with the SBA that omitted the Licensee's trade name, "Concord Casino," and identified the Licensee's primary business activity as "Miscellaneous Services" under NACIS Code: 541618 – "Other Management Consulting Services."

26. Concord Casino and Mr. Sanborn used or employed false or fraudulent pretenses, representations, or promises to obtain EIDL proceeds from the SBA.

27. On January 4, 2022, Concord Casino and Mr. Sanborn improperly received and retained EIDL proceeds of \$500,000 in Concord Casino's Operating Account.

28. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they booked Concord Casino's EIDL as a Payroll Protection Plan loan.

29. On January 18, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds by initiating a wire transfer of \$48,750 from Concord Casino's Operating Account, containing the EIDL proceeds to Charlie Cook of RaceCarsForRent, LLC of Braselton, GA, for the purchase of (i) a 2006 Porsche 987 Cayman S race car, and (ii) a set of four wheels for the Porsche.

30. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they entered the purchase of the 2006 Porsche 987 Cayman S race car and wheels in Concord Casino's accounting records as "equipment" purchases made in the ordinary course of Concord Casino's charitable gaming business.

31. On January 18, 2022, in violation of the terms of the EIDL's Loan Agreement, Concord Casino paid SouthWest Capital Corp. a success fee of \$10,000, for SouthWest Capital Corp assistance in obtaining Concord Casino's EIDL.

32. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they entered the \$10,000 success fee paid to SouthWest Capital Corp. in Concord Casino's accounting records as a consulting fee paid in the ordinary course of Concord Casino's charitable gaming business.

33. On February 2, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds by initiating a wire transfer of \$52,500 from Concord Casino's Operating

Account, containing the EIDL proceeds to KMAN Racing, LLC of Johns Creek, GA, for the purchase of a 2011 Porsche 987 Cayman S race car.

34. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they entered the 2011 Porsche 987 Cayman S Interseries race car purchase in Concord Casino's accounting records as an "equipment" purchase made in the ordinary course of Concord Casino's charitable gaming business.

35. On February 15, 2023, Concord Casino and Mr. Sanborn improperly received and retained EIDL proceeds of \$344,000 in Concord Casino's Operating Account.

36. On February 22, 2022, in violation of the terms of the EIDL's Loan Agreement, Concord Casino paid SouthWest Capital Corp. another success fee of \$6,880 for its assistance in obtaining the second tranche of Concord Casino's EIDL.

37. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they entered the \$6,880 success fee paid to SouthWest Capital Corp. in Concord Casino's accounting records as a consulting fee paid in the ordinary course of Concord Casino's charitable gaming business.

38. On April 26, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds by initiating a wire or other transfer of \$80,600 from Concord Casino's Operating Account, containing the EIDL proceeds to Taurino Racing, LLC d/b/a "Capristo Exhaust USA" of Riviera Beach, FL, for the purchase of (i) a 2008 F430 Ferrari Challenge race car chassis (\$80,000) and (ii) two sets of used tire rims (\$600), as gifts for Rep. Sanborn.

39. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they booked the purchase of the 2008 F430 Ferrari Challenge race car chassis and two sets of used tire rims in Concord Casino's accounting records as "equipment" purchases made in the ordinary course of Concord Casino's charitable gaming business.

40. Between April 19, 2022, and May 5, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds by initiating a series of transfers by check – check no. 20261 for \$10,000 on or about April 15, 2022, check no. 20265 for \$20,000 on or about April 25, 2022, and check no. 20268 for \$15,000 on or about May 5, 2022, totaling \$45,000 from Concord Casino's Operating Account, containing the EIDL proceeds to Peter Dawe of Dawe's Motorsports of Stroudsburg, PA, for the purchase of the Autoparts.

41. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they booked the Autoparts purchases in Concord Casino's accounting records as "advertising" expenses incurred in the ordinary course of Concord Casino's charitable gaming business.

42. On July 1, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds by initiating a transfer by check no. 20305 of \$14,600 from Concord Casino's Operating Account, containing the EIDL proceeds to Geotechnical Services, Inc. of Weare, NH, to purchase professional services for and related to developing a new casino entertainment facility in Concord, NH, owned by Concord Commitment.

43. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they booked the \$14,600 payment to Geotechnical Services, Inc.

in Concord Casino's accounting records as "outside services" incurred in the ordinary course of Concord Casino's charitable gaming business.

44. On or about July 8, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds when they initiated a transfer by check no. 20315 of \$14,206.78 from Concord Casino's Operating Account, containing the EIDL proceeds to TFMoran, Inc. of Bedford, NH, to purchase professional services for and related to developing a new casino entertainment facility in Concord, NH, owned by Concord Commitment.

45. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when they booked the \$14,206.78 payment to TFMoran, Inc. in Concord Casino's accounting records as "leasehold improvements" incurred in the ordinary course of Concord Casino's charitable gaming business.

46. By at least October 13, 2021, Concord Casino had paid TBR rent payments exceeding the total rent due for the entire five-year term under the 2018 Lease.

47. Beginning on January 5, 2022, and continuing through at least September 16, 2022, Concord Casino and Mr. Sanborn improperly used EIDL funds when they initiated a series of transfers totaling over \$169,900 from Concord Casino's Operating Account, containing the EIDL proceeds to TBR as rent payments under the 2018 Lease, despite the 2018 Lease providing for annual rent payments of \$6,000, payable monthly in twelve equal installments of \$500 each, and no rent payments being due to TBR under the 2018 Lease for that period.

48. Concord Casino and Mr. Sanborn made false entries in Concord Casino's books and records when, between January 5, 2022, and September 16, 2022, they booked

“rent” payments to TBR totaling over \$169,900 when no rent payments were due to TBR under the 2018 Lease for that period.

49. Concord Casino and Mr. Sanborn made false entries in Concord Casino’s books and records when they transferred \$150,000 to Mr. Sanborn’s personal account at Ledyard Bank and then booked a \$105,000 certificate of deposit at Ledyard Bank, payable to Mr. Sanborn as an asset of Concord Casino.

50. Concord Casino and Mr. Sanborn have failed to maintain true and accurate books and records for Concord Casino, as evidenced by their inability to provide timely and accurate financial statements during Concord Casino’s 2022 audit.

51. Concord Casino and Mr. Sanborn have failed to maintain true and accurate books and records for Concord Casino, as evidenced by their inability to provide timely and accurate financial statements during Concord Casino’s 2021 audit.

52. Concord Casino and Mr. Sanborn have failed to maintain true and accurate books and records for Concord Casino, as evidenced by Mr. Sanborn’s failure to file his 2022 federal income tax return before December 5, 2023.

53. Concord Casino and Mr. Sanborn have failed to maintain true and accurate books and records for Concord Casino, as evidenced by Mr. Sanborn’s failure to file his 2021 federal income tax return before December 5, 2023.

54. Concord Casino and Mr. Sanborn have failed to supply the Division with information and documentation demonstrating Concord Casino's financial stability by clear and convincing evidence, as evidenced by its 2022 audit results.

55. Concord Casino and Mr. Sanborn have failed to supply the Division with information and documentation demonstrating Concord Casino's financial stability by clear and convincing evidence, as evidenced by its 2021 audit results.

56. Concord Casino's and Mr. Sanborn's misconduct in applying for, obtaining, spending, and improperly accounting for \$844,000 of EIDL proceeds constitutes participation in illegal activities, serves a criminal interest, and undermines the public's confidence in the integrity of charitable gaming in New Hampshire.

57. By making multiple false entries in Concord Casino's books and records, Concord Casino's and Mr. Sanborn's misconduct undermines the public's confidence in the integrity of charitable gaming in New Hampshire.

58. By failing to supply the Division with information and documentation demonstrating Concord Casino's financial stability by clear and convincing evidence, Concord Casino's and Mr. Sanborn's misconduct undermines the public's confidence in the integrity of charitable gaming in New Hampshire.

59. For all or any of the preceding reasons, Concord Casino's games of chance facility license and game operator employer license should be revoked for good cause shown.

[Signature page follows]

Respectfully submitted,

NEW HAMPSHIRE LOTTERY INVESTIGATION
AND COMPLIANCE DIVISION

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: December 19, 2023

By:



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CERTIFICATE OF SERVICE

I certify that copies of the preceding were transmitted via email to the Respondents' legal counsel, Zachary R. Hafer, Esq. at zhafer@cooley.com, Adam M. Katz, Esq. at akatz@cooley.com, and Mark Knights, Esq. at mknights@nixonpeabody.com.

Date: December 19, 2023



Mark W. Dell'Orfano