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May 29, 2025

California Department of Justice
Bureau of Gambling Control
BGC_Regulations@doj.ca.gov
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

Re: Comment Letter – Blackjack Style Games

Dear Sir or Madam:

I write on behalf of Artichoke Joe's with comments on the proposed regulations prohibiting blackjack style games.

The Bureau of Gambling Control proposes to prohibit all current designated player[1] blackjack games based on the prohibition in Penal Code Section 330 against the game of "twenty-one."

The proposed regulations constitute a reversal in the Bureau's application of this law to designated player games in general over the last 35 years and to designated player blackjack-style games over the last 30 years. Designated player games originated in the mid-1980s; Blackjack-style games began to appear in the mid-1990's. After the initial court cases ruled that designated player games were not banked games, the Bureau never challenged the legality of these games as banked games or as "twenty-one." Over the last 25 years, the Bureau of Gambling

[1] This letter will use the term "designated player" instead of "player dealer." The term "player-dealer" is confusing because the designated player is not a dealer. The house, not the designated player, deals the game. The designated player is just a player. The designated player bets against all the other players in one-on-one match-ups as the dealer does in Nevada and Indian casino games, but a designated player is not the dealer and calling them a dealer creates confusion and is prejudicial to an analysis of the legality of these games.

Control ("Bureau"), has approved hundreds of blackjack-style games. The law has not changed since 2001, but now, suddenly without any change in the statute or the case law, the Bureau proposes to reverse its position and treat blackjack style games as illegal.

This letter raises three issues. First, the Bureau of Gambling Control lacks authority to promulgate these regulations. Second, the proposed regulations are not consistent with Penal Code Section 330 because the designated player games played today are fundamentally different than those prohibited by the statute. Third, the prohibition in Section 330 against "twenty-one" is void for vagueness.

I. THE BUREAU LACKS AUTHORITY TO ADOPT THE PROPOSED REGULATIONS

The Bureau proposes to prohibit the play of blackjack style games based on its interpretation of the prohibition in Section 330 against twenty-one, but the Bureau has no authority to construe or supplement the Penal Code by regulation. The general rule is that "only the Legislature can define crimes." *People v. Figueroa* (1999) 68 Cal.App.4th 1409. "Only the Legislature, not an administrative body, may determine what conduct is unlawful." *Id.* "The underpinnings of this nondelegation rule include the constitutional provision vesting legislative power in the Legislature, which requires the Legislature to make fundamental policy decisions (Cal. Const., art. IV, §1...)." *Id.*

As acknowledged in the Initial Statement of Reasons ("ISOR"), the two main responsibilities of the Bureau under the Gambling Control Act (the "Act") are investigation and enforcement. However, the Bureau is responsible to enforce the Act, not the Penal Code. The Act requires certain people to be licensed and governs licensees, a small part of the state population. The Penal Code applies to everyone in the state. The Bureau attempts to define a criminal law the applies to everyone with a regulation that applies just to licensees, creating the possibility of the law being interpreted differently for everyone else.

The ISOR cites to Section 19826(g) of the Act as the authority for these regulations. That Section provides that the Bureau shall have the responsibility to "approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played." However, nowhere does Section 19826 provide specific authority for the Bureau to adopt regulations defining terms used in Penal Code Section 330. Section 19826 is in the Business

& Professions Code and part of the Act, not in the Penal Code, and the stated purpose of the Act is "to *regulate* businesses that offer *otherwise lawful* forms of gambling games." (19801(f).) The effect of the regulation would not be to regulate lawful gambling, but to define what is lawful and what is not lawful under the Penal Code and thus far exceeds the Bureau's authorization under Section 19826.

The Bureau's authority to adopt regulations under the Act is very limited. In contrast, Section 19841 of the Act grants the Gambling Control Commission broad powers to adopt regulations to regulate cardrooms. To the extent the Act allows regulation of games or gaming activities at all, that authority rests with the Commission. Section 19841(b) requires the Commission to adopt regulations to "provide for the approval of game rules and equipment by the department to ensure fairness to the public and compliance with state laws." Section 19842 then imposes limits on the Commission's powers to restrict games by requiring the Commission to conduct a proceeding to determine if a game violates the law. Section 19842(a) reads,

> "The commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, unless the commission, in a proceeding pursuant to this article, finds that the game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance."

The Legislature would not have imposed this limit only on the Commission if the Bureau had the ability to prohibit the play of games or restrict the manner in which games are played. That would have made no sense. Further, this section allows restrictions to be imposed on games only to prevent violation of a law, not to determine what the law will be. The Legislature did not delegate its powers to make criminal law to either the Commission or the Bureau, and such a function would have violated Constitutional separation of powers.

Therefore, as we read the Act, the Bureau's authority under Section 19826 to impose "restrictions and limitations" on games must be consistent with regulations adopted by the Commission, and Commission regulations can be adopted only after a proceeding that finds that a game violates Section 330. There has been no such proceeding, and the Commission has not adopted such regulations, and therefore, the Bureau has no authority to promulgate these regulations.

II. THE PROPOSED REGULATIONS ARE NOT CONSISTENT WITH SECTION 330 AS THE BLACKJACK STYLE GAMES PLAYED TODAY ARE FUNDAMENTALLY DIFFERENT THAN THE TWENTY-ONE GAME PROHIBITED BY THE STATUTE

Penal Code Section 330 prohibits play of the game named "twenty-one," but neither Section 330 nor any other statute details the rules of the game or the characteristics that make the game illegal.

As the ISOR acknowledges, "Whether a game is prohibited by law depends on the manner of play, not the name of the game," citing 60 Ops.Cal.Atty.Gen 130, 132 (1977), which in turn cites *California Gasoline Retailers v. Regal Petroleum Corp.* (1958) 30 Cal.2d 844, 859, and *People v. Shira* (1976) 62 Cal.App.3d 442,461. This requires analyzing the manner of play in 1885 and comparing it to the manner of play today.

The games at issue here are all played with a significant difference from how games were played in 1885. In 1885, the games were all played as banked games, with the person offering the game (variously called exhibiting, spreading, dealing, and conducting the game) also banking the game, a practice commonly known as house banking. Today, the games are played as designated player games with the players playing against one another and the house not playing in the game at all.

The ISOR states that a minor change in the rules that does not change a game's essence will be of no consequence. As the ISOR quotes from an 1892 case,

> "[W]hen a prohibited game is played in all respects in the usual way, and according to its established rules, the purpose of the law cannot be thrwarted by the simple device of playing it with one or two cards less than the number usually employed."
>
> *People v. Gosset* (1892) 93 Cal.641, 643.

Here the differences between how the games are played today versus how they were played in 1885 are more significant than removal of one or two cards from the deck such that today's games are not in all respects played in the usual way as and according to the established rules as the twenty-one games prohibited in 1885 and the proposed regulations are not consistent with the statute.

A. TODAY THE HOUSE IS NOT A BANKER; INSTEAD THE GAMES ARE PLAYED WITH DESIGNATED PLAYERS, A FUNDAMENTAL DIFFERENCE FROM THE GAMES PROHIBITED BY THE STATUTE

1. SECTION 330 HAS A TWO PART STRUCTURE RELATED TO THE TWO ROLES IN BANKED GAMES

The prohibition against "banking games" dates back to 1855, and was codified into Section 330 in 1872. Currently, Section 330 reads:

> Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

This statute has two clauses. The first clause applies to anyone who "deals, plays, or carries on, opens or causes to be opened, or who conducts" the specified games. The second clause applies to any person "who plays or bets at or against" any of the prohibited games. Thus, the first clause is directed at the house or, in the absence of a house, the person who spreads the game, and the second clause is directed at the players. *People v. Lung* (1886) 70 Cal. 515 ["The offense defined in the first clause of the section...embraces all persons who carry on or conduct such games ... but it does not include any one who plays or bets at or against such games, they being included in the second clause of the said section."]

This two-part structure of Section 330 reveals a factual underpinning of the statute when it was adopted, namely, that all the players in these prohibited card games fell into one of those two roles. A player was either the person who both dealt the game and banked the game, taking on all the other players, or was one of the players who plays against the dealer. Banking was always done by the person spreading the game, the "house," and the statute's two clauses covered the only two types of actors in those house banked games.

2. DESIGNATED PLAYER GAMES SEPARATE THE ROLE OF DEALER/BANKER INTO TWO ROLES AND THUS HAVE THREE TYPES OF ACTORS

The two-part structure of Section 330 reflected the games that existed in 1885 when the game of twenty-one was added to the statute, and that existed for a hundred years after that into the 1980s. In or about 1984, a new type of game was developed with different participants. In designated player games, including blackjack style games, the former combined role of dealer and banker is separated into two roles held by two different people, the house which deals the game but is not a player in the game, and a player who serves as a designated player and has no part in conducting the game.

So today, there are three types of persons involved in a game: the dealer (or house), who is not a participant in the game, a designated player who plays against all the other players, and the other players who play against the designated player. The house deals the game but does not play in the game, and the former role of the house banker which served as both a player and the dealer does not exist. So the commercial enterprise enticing people to play the game is no longer the gambler with a stake in the game.

3. THE CORRELATION BETWEEN THE STATUTE AND THE ROLES OF ACTORS NO LONGER EXISTS

As a result of this division of roles, the structure of the statute no longer corresponds to the structure of the games. The statute applies to a game with a combined dealer/banker; the current games no longer have a person in that role. The statute applies to a game with two actors and the current games have three actors. When designated player games appeared forty years ago, this created a legal issue of whether the statute would prohibit these newly configured games. The 1885 statute was directed at a house banker, and no one could have foreseen the development of designated player games. The statute was not meant to cover these games and doesn't cover these games.

B. DIFFERENCES IN THE GAMING EXPERIENCE OF DESIGNATED PLAYER GAMES ARE NUMEROUS AND SIGNIFICANT

Separation of the former role of dealer/banker into two roles and reassignment of the banker role to a player not only changes the structure of the

game from the structure of the statute. It also leads to a number of differences in the roles and gaming experiences of the house and the players.

Designated player games are different from banked casino games as played in Nevada casinos and Indian casinos in a number of significant ways. First, and most important, the house is no longer a player in the game, competing against the customers. The house's sole role is to deal the game.

When the house deals the game but does not play in the game, the dealer is a completely neutral party, more akin to an umpire or a referee. The house's duties are to handle and deal the cards according to the rules, to police the players to make sure each of them play according to the rules, and to rule on the outcome of the game and settle the bets.[2] The house dealer is a trained professional, watching for mistakes and for cheating, in order to protect the game and its integrity, handling the cards and handling the chips to settle the bets. The dealer is assisted by a floorman and a shift manager who also have responsibilities over the conduct of the game. In addition to these floor personnel, surveillance personnel watch live video feed 24 hours a day from a state-of-the art surveillance system for any irregularities in order to further this goal of running an honest game.

This role of a neutral operator differentiates California games from games in Nevada and Indian casinos where the house (the *casa* or *casino*) is both a player and the dealer and participates in the game to make money directly from the wagers. In those casinos, the house does not charge a fee. Rather it makes money from playing and winning the games, and surveillance is primarily to protect the house, not the customers. There is no neutral party to conduct the games.

Second, the designated player position is offered to all players continuously and systematically so that each player has an ***equal opportunity*** to play in this position. In Nevada casinos and Indian casinos, players ***never*** have the opportunity to play as the banker. The house hordes that position for itself. But in California games, the designated player position has always rotated every two rounds. It is offered to the next player, and he or she can accept the position or not. If not, the position is offered to the next player and so on until a player accepts the position. The house never plays; the designated player is always a player.

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[2] The house settles the bets in the sense of physically transferring possession of the chips from one player to the other. This is different from casinos which settle the bets by collecting payment from the losers and paying the winners.

Third, the designated player always places a fixed bet which may or may not cover the bets of all the other players. There is always a risk that a player will accept the designated player position and not cover all the bets. When that occurs, that is a huge difference for the player.

Fourth, when the house deals the game but does not play in the game, the house no longer makes money on the gambling, nor has any interest in the outcome of any particular game or in the amounts wagered. Instead of competing against the players in the play of the game, the house charges a fixed *fee*. It charges a fee for use of the facilities and for services running the game. The fixed fees are regulated.

Fifth, at certain cardrooms, including Artichoke Joe's, every player at the table pays a fee. The designated player and each of the other players pays a separate fee to the house. For the players, this offers the most consequential difference from banked games. It is a charge they do not have to pay at Nevada and Indian casinos and given a choice between two gambling houses, one with this charge and one without it, players would most likely choose to play at the one without the charge.

C. INITIAL CASES ALL RECOGNIZED THESE FUNDAMENTAL DIFFERENCES BETWEEN THE NEW PLAYER DEALER CASES AND THE GAMES PROHIBITED BY SECTION 330

Introduction of designated player games in 1985 triggered numerous challenges by law enforcement, and resulted in three separate appellate court decisions in quick succession. All three decisions reached the same conclusion–that designated player games were not prohibited banked games under Section 330 because the house was not a participant in the games. Although none of these early cases involved games of "twenty-one," the import of these rulings applies to all designated player games.

1. *Sullivan v. Fox*

In January 1987, the First District decided *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, the first opinion on the legality of designated player games and the most thorough and thoughtful analysis of Section 330 of all to come. The court ruled that a banking game is a game "***where the house is actually involved in play***" and concluded that designated player games are not banking games because

the house is not a player in the games and has no interest in the outcome of the games.

Sullivan's analysis began, "Banking game has come to have a fixed and accepted meaning: the 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." The court contrasted this known meaning with the term "percentage game" which had no such precedent. To define "percentage game," the court analyzed how the two terms, "banking game" and "percentage game" relate to one another. The court wrote:

> [T]he Legislature adopted the 'banking or percentage game' test as a flexible means of reaching *two evils* perceived by the Legislature. The first pertains to situations where *the house is actually involved in play*, its status as the ultimate source and repository of funds dwarfing that of all other participants in the game. This is covered by Section 330's prohibition against banking games. The other situation finds the house in a more passive role. *Where the house is not directly participating in game play*, it can still be involved if it collects a percentage from the game. This percentage may be computed from the amount of bets made, winnings collected, or the amount of money changing hands. The percentage may be assessed collectively or individually. Regardless of the precise formula employed, the *house* benefits. The *house* has *no interest in the outcome of play*, but it is far from *disinterested* in the amount of play. It is in the enviable position of obtaining profit without incurring risk of loss from the actual play. *Its actual participation is nil, thereby distinguishing it from the banking game situation*, but it nevertheless gains. In any event, *the house derives benefit from commercial gambling, the elimination of which is the legitimate objective of statutes such as Section 330*.
>
> *Sullivan,* at 679 (Emphasis added)

Thus, *Sullivan* read Section 330 to focus on the house's involvement in the game, and to prohibit the only two possibilities that existed at the time: one, when the house is *directly involved in play as a participant in the game* and has *an interest in the outcome of the play,* and the other, *when the house is not directly participating in game play*, but is involved indirectly, sharing in the *amount of play*.

The court also explained the purpose of the law: to prevent the house from "deriv[ing] benefit from commercial gambling." The house is not to be involved either directly or indirectly in the game but was to be a "disinterested" party.

In pai gow, the house was not a participant in the game and so the game was not a banking game. *Sullivan's* construction of Section 330 serves to further a public policy that the house remain "disinterested" in the outcome of the games. As discussed above, when the house is prohibited from participating either directly or indirectly in the designated player games, its role is limited to that of an independent and neutral referee, to protect the integrity of the game. The house employs dealers and floormen to deal the cards and enforce the rules. They watch for mistakes and for signs of cheating. The house has no interest in the outcome of the games and no share in the amount bet or won.

In contrast, when the house is a banker, there is no independent referee who runs the games and maintains the integrity of the game. The house has an interest in the game and hires employees to protect the house's bankroll. This is what distinguishes California games from those in Nevada and Indian casinos.

2. *Walker v. Meehan*

Seven months after *Sullivan*, the First District issued an opinion in *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, the second case concerning designated player games, and it closely adhered to *Sullivan*. In *Walker*, there was no claim of the game being a banking game. ("The issue of the definition of a banking game has not been raised in this appeal.") Nevertheless, the court affirmed the definitions of banking game and percentage game as stated by *Sullivan*, as well as the goal of the statute to prevent "the ***house*** [from] having an interest in the game, whether through acting as banker or taking a percentage of the wagers." *Walker*, p. 1296. The court further wrote, "The Legislature must have intended that the ***house*** not link its profits to the profits derived from gambling, whether or not it participated as the banker." (*Walker*, at 1300.) Like the *Sullivan* court, the *Walker* court read Section 330 to focus on the *house's role* and to prohibit the interest of the house in the game.

3. *Huntington Park Club Corp. v. County of Los Angeles*

In November 1988, the Second District Court of Appeal in Los Angeles issued *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206

Cal.App.3d 241, and followed the lead of the First District, invoking the *Sullivan* decision and holding that pai gow was not a banking game. The County of Los Angeles argued "that the house does not have to participate in the game in order for a banking game under Section 330 to be found," (pp. 249-250). The County argued that *Sullivan* defined "banking game" as a game where "the 'house' or 'bank' is a participant in the game," and that "the use of the disjunctive 'or' [applied the proscription] equally to the 'house' and the 'bank' as two separate and different types of participants." The court held that County had not presented any evidence that the house or any other entity operate a bank, and did not reach the legal question of whether that would constitute a banking game.

Clearly, the County's read of the phrase "'house' or 'bank'" in *Sullivan* was not consistent with how the *Sullivan* court meant the phrase. The *Sullivan* decision holds that a banking game is a game "where the *house* is actually involved in play" and that a percentage game is a game "[w]*here the house is not directly participating in game play*" but is indirectly involved. Most important, even though players played as designated players, *Sullivan* did not even consider whether the player was a banker. It is obvious from all of this that when *Sullivan* defined banking game using the "house or bank" phrase, those two words were alternative words for the same person, namely the person who serves as **both** exhibitor and banker, not meant to describe different persons in one role or the other.

Again, the only issue in determining if this was a banking game was whether the house participated in the game.

D. IN 1991, THE LEGISLATURE ACQUIESCED TO THE COURTS' INTERPRETATION THAT SECTION 330 DOES NOT APPLY TO DESIGNATED PLAYER GAMES

In June 1991, the Legislature amended Section 330 in Assembly Bill 97, but did not alter the definition of the term "banking game" as construed in the court cases. The purpose of the bill was to delete stud-horse poker as one of the games prohibited by name. This was done to conform the statute with the holding in *Tibbetts v. Van de Kamp* (1990) 222 Cal.App.3d 389.

When the Legislature passed AB 97, it was well aware of the case law. Three of the four appellate court opinions on the term "banking game" had been issued, and the *Tibbetts* decision had quoted the definition of banking game from *Sullivan*.

The Legislature's action in amending the statute and not amending the term "banked game" as construed in the case law, constituted acquiescence to the court's construction of that term. "It is well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734. Here, the Legislature amended the statute specifically to conform to a case that had recited the definitions of banking and percentage game. Therefore the Legislature clearly acquiesced in the judicial construction of these terms.

The inference of acquiescence is especially compelling when as here the "Legislature has been very active" in a particular "area of law." *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1015. From 1993 to 1997, the Legislature considered, developed and finally enacted the Gambling Control Act, through a series of bills, numerous committee hearings, and much floor debate and was well aware of the designated player games. Further, the Legislature during this period enacted a moratorium on legalization of more cardrooms. The lack of any attempt to modify the court's construction of "banking games" strongly compels an inference of acquiescence.[3]

E. THE ISOR DOESN'T ADDRESS QUESTIONS OF WHETHER GAMES ARE SAME OR DIFFERENT AND IGNORES THE LEGISLATURE'S ACQUIESCENCE TO THE INITIAL CASES

Surprisingly, even though the ISOR raised the issue that a statutory prohibition against a game applies not to a game based on the game's name but instead based on the manner of play, the ISOR does not analyze the manner of play of both the designated player games of today and the banked games of 1885 to determine whether the differences are minor or major.

The ISOR sets forth a set of rules which it claims have remained the same for over a hundred years, but there are two problems with that showing. One, 100 years ago speaks to 1925, not 1885 when Section 330 was amended to include the prohibition against twenty-one. So that does not speak to the issue. Second,

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[3] We note that SB 8 (Stat. of 1997, ch. 867) which enacted the Act also added provisions to the Welfare and Institutions Code to create a State Program of Problem Gambling, thus addressing concerns of problem gambling with regulation.

the ISOR fails to provide any citation to its evidence, let alone actual documentation. Given the lack of a statutory definition of "twenty-one" or identification of the characteristics of the game that are offensive to the law, there needs to be some authoritative evidence of legislative intent. An unattributed list of rules purportedly 100 years old does not begin to establish legislative intent in 1885. "[T]he interpretation of Section 330 involves a question of law." *Sullivan*, n. 4. However, legislative history is by nature evidentiary. Here, no reliable evidence has been provided.

Second, the ISOR does not address the differences in the games today and the use of designated players. Even though the ISOR quoted the *Gosset* case that the issue is the manner of play, the ISOR makes no attempt to show that the manner of play in today's games is "in essence" the same as in 1885. Without such a showing, the Bureau cannot establish consistency with the statute.

F. CONCLUSION

The role of the house is so different in designated player games from games of twenty-one as played in 1885, that the games are different and the prohibition against house banked twenty-one games does not apply to the current designated player games. The courts recognized that and the Legislature acquiesced to that interpretation. That undoubtedly is why the Bureau has approved these games for the last 20 years. Therefore, the proposed regulations which treat designated player games, including blackjack style games, as the same as the games prohibited by Section 330, including twenty-one, are not consistent with Section 330.

III. PENAL CODE SECTION 330's PROHIBITION OF "TWENTY-ONE" IS VOID FOR VAGUENESS

As already discussed, Section 330 prohibits play of the game named "twenty-one," but neither Section 330 nor any other statute details the rules of the game or its manner of play that makes the game illegal. Nor does the ISOR make any showing of what was the manner of play in 1885 when the statute was amended to prohibit "twenty-one." Without any definition in the statute, or any was to determine legislative intent, Section 330's prohibition of "twenty-one" is void for vagueness and cannot be applied other than to house banked games.

As the court held in *In re Davis* (1966) 242 Cal.App.2d 645, 650 which is cited in *Walker v. Meehan* 194 Cal.App.3d (1987) 1290, 1302:

> The classic formulation of the test for unconstitutional vagueness is that of Justice Sutherland in *Connally v. General Constr. Co.*, 269 U.S. 385, 391 [46 S.Ct. 126, 70 L.Ed. 322]: "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. [3] And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

In *Tibbetts v. Van de Kamp* (1990) 222 Cal.App.3d 389, the court struggled with the same challenge to Section 330's prohibition to Stud Horse Poker, and whether it prohibited a game named Texas Hold'Em. The court wrote, "The definition of stud-horse poker, which has never been legislatively or judicially defined since its prohibition in 1885, remains uncertain...." In the end, the court was able to conclude that the two games were different enough that the prohibition against Stud Horse Poker, which involved face down cards, did not cover the game of Texas Hold'Em which involved face up community cards. However, the court then concluded the opinion with this suggestion:

> We note that the regulation of gambling in general and of poker games in particular in California is a matter for the Legislature, not the judiciary. The continuing uncertainty arising from the stud-horse poker proscription in Section 330 may be alleviated by appropriate legislation.

The following year, the Legislature heeded that advice and repealed the prohibition against stud horse poker in Section 330. The prohibition against twenty-one suffers from the same problem.

In *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, the court construed the prohibition in Section 330 against "percentage games," but Judge Newsom (current Governor Newsom's father) dissented and would have held that part of the statute void for vagueness. He wrote,

> "... neither I, nor the Legislature, nor to the best of my knowledge 'men of common intelligence' [cite] can say with the reasonable

> certainty required by law what is a 'percentage' game as proscribed by Penal Code Section 330. ¶ For that reason, I am of the opinion that Penal Code Section 330 is void for vagueness, in that it does not adequately or reasonably define the conduct sought to be prohibited, and in a manner that does not encourage arbitrary and discriminatory enforcement." The same is true here as to the prohibition of "twenty-one."

More on point here, confusion over Section 330's prohibition of twenty-one is apparent in *Oliver v. County of Los Angeles*, involving a blackjack style game called "Newjack." As recounted in the appellate decision, the trial court "concluded Newjack violates Section 330 because the rules of Newjack are 'sufficiently similar to the prohibited game of 21' to make the distinctions between the two games inconsequential." 66 Cal.App.4th at 1402. However, the appellate refused to affirm on that basis, writing, "[Newjack] is not one of the games specifically mentioned in Section 330." (Brackets in original.)

There is no way to know what the Legislature meant in 1885 by "twenty-one," and without an acceptable evidence of Legislative intent, the prohibition against twenty-one is void for vagueness.

* * *

For the reasons discussed, the proposed regulations should not be adopted. We appreciate your attention to these comments.

Sincerely,

[redacted]

Alan Titus

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May 29, 2025

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2450 Del Paso Road, Suite 100
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Re: Proposed Rulemaking–Rotation of the Player-Dealer Position

Dear Sir or Madam:

I write on behalf of Artichoke Joe's to comment on the proposed regulations governing rotation of the designated player position.[1]

The proposed regulations would impose limitations and restrictions on game rules in games featuring a designated player position. The regulations would require (1) that cardrooms offer the designated player position around the table after every hand instead of every two hands as has been the custom for the last 40 years and (2) that every 40 minutes, at least two players other than the third party player must accept the position.

These regulations controvert the Bureau's application of the law to designated player games over the last 40 years. Designated player games originated

[1] This letter will use the term "designated player" instead of "player dealer." This term "player-dealer" is confusing, as the designated player is not a dealer. The house deals the game, not the designated player. The designated player bets against all the other players in one-on-one match-ups as the dealer does in Nevada and Indian casino games, but a designated player is not the dealer and calling them a dealer creates confusion and is prejudicial to an analysis of the legality of these games.

in the mid-1980s, From the start, this position continuously and systematically rotated among the players by affording each player the temporary opportunity to occupy the designated player position for two rounds. In 2000, when the Legislature first adopted legislation regarding these type of games, they defined "'player-dealer' and 'controlled game that features a player-dealer position'" to require exactly that. Rotation of the designated player position means "affording the opportunity" to occupy the position. See 19805 (ag) of the Gambling Control Act (the "Act"). Players have never been required to accept the position. Since play by temporary third party players became widespread in the early 2000's. The Bureau of Gambling Control ("Bureau") has approved literally thousands of games with rules that allow for rotation of the designed player position as an offer of the temporary opportunity to occupy the position. The law has not changed since 2001, but the Bureau now proposes to reverse its long-standing position and require acceptance of the designated player position by other than third party players despite the law defining "player-dealer" game as one in which seated players "are afforded the temporary opportunity" to occupy this position.

This letter raises three issues. First, the Bureau of Gambling Control lacks authority to promulgate these regulations. Second, the proposed regulations would be inconsistent with Penal Code Section 330. The Initial Statement of Reasons ("ISOR") claims these regulations are necessary to enforce Penal Code Section 330 as interpreted by *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, but there is a split in legal authority on the interpretation of Section 330. A different appellate court, *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, ruled that a banking game is "where the house is actually involved in play," which does not occur in designated player games and the Legislature had already acquiesced to the *Sullivan* definition prior to *Oliver*. Third, the proposed regulations are not mandated by Penal Code Section 330.11.

I. THE BUREAU LACKS AUTHORITY TO ADOPT THE PROPOSED REGULATIONS

The proposed regulations would define the term "banking game" as it is used in Section 330, but the Bureau lacks authority to adopt these regulations. Contrary to claims in the ISOR, the term "banking game" is not already defined in either the Penal Code or in the Act. Penal Code Section 330.11 sets out a safe harbor provision and requirements to qualify for the safe harbor, but neither Section 330.11 nor any other statute purports to define the term "banking game."

Although Section 19805 in the Act purports to be a set of definitions, and although subdivision (c) pertains to "banking games," subdivision (c) is not a definition but a substantive safe harbor provision with the same language as Penal Code Section 330.11. Moreover, the term "banking game" is used only once in the Act, namely in Section 19802 which sets forth a finding by the Legislature of the regulations that would be needed if banking games were ever legalized. That is not a substantive provision, and there is no substantive use of the term "banking game" in the Act. So these regulations serve no purpose other than to enforce Section 330.

Government Code Section 11349.1 requires that the Department must have authority in order to adopt such a regulation. Govt. Code Section 11349 defines "authority" as a "provision in law which permits or obligates the agency to adopt, amend or repeal a regulation." The Department identifies no such provision in law and has no such authority.

The general rule is that "only the Legislature can define crimes." *People v. Figueroa* (1999) 68 Cal.App.4th 1409. "Only the Legislature, not an administrative body, may determine what conduct is unlawful." *Id.* "The underpinnings of this nondelegation rule include the constitutional provision vesting legislative power in the Legislature, which requires the Legislature to make fundamental policy decisions (Cal. Const., art. IV, §1...)." *Id.*

As acknowledged in the Initial Statement of Reasons ("ISOR"), the two main responsibilities of the Bureau under the Act are investigation and enforcement. However, the Bureau is responsible to enforce the Act, not the Penal Code. The Act requires certain people to be licensed and governs licensees, a small part of the state population. The Penal Code applies to everyone in the state. The Bureau attempts to define a criminal law the applies to everyone in the state with a regulation that applies just to licensees, creating the possibility of the law being interpreted differently for everyone else.

The ISOR identifies Section 19826(g) of the Act, entitled "Responsibilities of department," as the authority for these regulations. That section provides that the Bureau shall have the responsibility to "approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played." However, nowhere does Section 19826 provide specific authority for the Bureau to adopt regulations defining a term used in the Penal Code but not in the Act. Section 19826 is in the Business & Professions Code and part of the Act, not

in the Penal Code, and the stated purpose of the is "to *regulate* businesses that offer *otherwise lawful* forms of gambling games." (19801(f).) The effect of the proposed regulation would not be to regulate otherwise lawful gambling, but to define what is lawful and what is not under the Penal Code, and thus far exceeds the Bureau's authorization under Section 19826.

The Bureau's authority to adopt regulations under the Act is very limited. In contrast, Section 19841 of the Act grants the Commission broad powers to adopt regulations. To the extent the Act allows regulation of games or gaming activities at all, that authority rests with the Commission. Section 19841(b) requires the Commission to adopt regulations to "provide for the approval of game rules and equipment by the department to ensure fairness to the public and compliance with state laws." Section 19842 then imposes limits on the Commission's powers to restrict games by requiring the Commission to conduct a proceeding to determine if a game violates the law. Section 19842(a) reads:

> "The commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, unless the commission, in a proceeding pursuant to this article, finds that the game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance."

The Legislature would not have imposed this limit only on the Commission if the Bureau too had the ability to prohibit the play of games or restrict the manner in which games are played. That would have made no sense. Further, this section allows restrictions to be imposed on games only to prevent violation of a law, not to determine what the law will be. The Legislature did not delegate its powers to make criminal law to either the Commission or the Bureau, and such a function would have violated Constitutional mandated separation of powers.

Therefore, as we read the Act, the Bureau's authority under Section 19826 to impose "restrictions and limitations" on games must be consistent with regulations adopted by the Commission, and Commission regulations can be adopted only after a proceeding that finds that a game violates Section 330. There has been no such proceeding, and the Commission has not adopted such regulations.

For all these reasons, the Bureau has no authority to promulgate these regulations.

II. THE PROPOSED RULE WOULD BE INCONSISTENT WITH PENAL CODE SECTION 330

The ISOR does not present a full or fair picture of the law on the meaning of the term "banking game" in Section 330. The courts construed the term to apply only to "house banking" and the Legislature acquiesced to that definition long before *Oliver* was ever decided. *Oliver* was a renegade decision, and if valid at all today, it at most creates a split in authority with *Sullivan*.

A. STRUCTURAL ANALYSIS OF PENAL CODE SECTION 330–TWO TYPES OF ACTORS

The prohibition against "banking games" dates back to 1855, and was codified into Section 330 in 1872. Currently, Section 330 reads:

> Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

This statute has two clauses. The first clause applies to anyone who "deals, plays, or carries on, opens or causes to be opened, or who conducts" the specified games. The second clause applies to any person "who plays or bets at or against" any of the prohibited games. Thus, the first clause is directed at the house or, in the absence of a house, the person who spreads the game, and the second clause is directed at the players. *People v. Lung* (1886) 70 Cal. 515 ["The offense defined in the first clause of the section...embraces all persons who carry on or conduct such games ... but it does not include any one who plays or bets at or against such games, they being included in the second clause of the said section."]

This two-part structure of Section 330 reveals a factual underpinning of the statute when it was adopted, namely, that all the players in these prohibited card

games fell into one of those two roles. A player was either the person who both dealt the game and banked the game, taking on all the other players, or was one of the players who plays against the dealer. Banking was always done by the person spreading the game, the "house," and the statute's two clauses covered the only two types of actors in those house-banked games.

Thus, in *People v. Ambrose* (1953) 122 Cal.App.2d 966, 970, the court wrote: "'Where the players bet against each other and settle with each other, the game is not a banking game....' (See, also, *Cummings v. State*, (Tex. Crim. App.) 72 S.W. 395; *State v. Bradley*, 51 R.I. 4 [149 A. 863].)" quoting *State v. Rabb*, 130 La. 370 [57 So. 1008, 1010].

B. DESIGNATED PLAYER GAMES SEPARATE THE ROLE OF DEALER/BANKER INTO TWO ROLES; THUS DESIGNATED PLAYER GAMES HAVE THREE TYPES OF ACTORS

The two-part structure of Section 330 reflected the games that existed in 1872 when the statute was passed, and that existed for over a hundred years after that into the 1980s. In or about 1984, a new type of game was developed with a different structure. In designated player games, the former combined role of dealer and banker is separated into two roles held by two different people, the house which deals the game but is not a player in the game, and a player who serves as a designated player and has nothing to do with conducting the game.

So today, there are three types of persons involved in a game: the dealer, who is not a player in the game, a designated player who plays against all the other players, and the other players who play against the designated player. The house deals the game but does not play in the game, and the former role of the house banker which served as both a player and the dealer does not exist. As a result, the commercial enterprise enticing people to play the game is no longer the person banking the game with a stake in the game.

As a result of this division of roles, the structure of the statute no longer corresponds to the structure of the game. The statute applies to a game with a combined dealer/banker; the current games no longer have a person in that role. The statute applies to a game with two actors, and the current games have three actors. The statute was not designed to apply to this game structure, and it is not clear how to apply the statute to this structure.

C. DIFFERENCE BETWEEN HOUSE BANKED GAMES AND DESIGNATED PLAYER GAMES ARE NUMEROUS AND SIGNIFICANT

Separation of the former role of dealer/banker into two roles and reassignment of the banker role to a designated player and modification of the role not only changes the structure of the game from the structure of the statute. It also leads to a number of differences in the roles and gaming experiences of the house and the players.

Designated player games are different from banked casino games as played in Nevada and Indian casinos in a number of significant ways.

First and most important, the house is no longer a player in the game, competing against the customers. The house's sole role is to deal the game. When the house deals the game but does not play in the game, the dealer is a completely neutral party, more akin to an umpire or a referee. The house's duties are to handle and deal the cards according to the rules, to police the players to make sure each of them play according to the rules, and to rule on the outcome of the game and settle the bets.[2] The house dealer is a trained professional, watching for mistakes and for cheating, in order to protect the game and its integrity, handling the cards and handling the chips to settle the bets. The dealer is assisted by a floorman and a shift manager who also have responsibilities over the conduct of the game. In addition to these floor personnel, surveillance personnel watch live video feed 24 hours a day from a state-of-the art surveillance system for any irregularities, furthering the goal of running an honest game.

This role of a neutral operator differentiates California games from games in Nevada and Indian casinos where the house (the *casa* or *casino*) is both a player and the dealer and who participates in the game to make money directly from the wagers. In those casinos, the house does not charge a fee. Rather it makes money from playing and winning the games, and surveillance is primarily to protect the house, not the customers. There is no neutral party to conduct the games.

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[2] The house settles the bets in the sense of physically transferring possession of the chips from one player to the other. This is different from Nevada and Indian casinos which settles the bets by collecting payment from the losers and paying the winners.

Second, the designated player position is offered to all players continuously and systematically so that each player has an ***equal opportunity*** to play in this position. In Nevada casinos and Indian casinos, players ***never*** have the opportunity to play as the banker. The house hordes that position for itself. But in California games, the designated player position has always rotated every two rounds. It is offered to the next player, and he or she can accept the position or not. If not, the position is offered to the next player and so on until a player accepts the position. The house never plays; the designated player is always a player.

Third, the designated player always places a fixed bet which may or may not cover the bets of all the other players. There is always a risk that a player will accept the designated player position and not cover all the bets. When that occurs, that is a huge difference in the gaming experience from that in a banking game for the player.

Fourth, when the house deals the game but does not play in the game, the house no longer makes money on the gambling, nor has any interest in the outcome of any particular game or in the amounts wagered. Instead of competing against the players in the play of the game, the house charges a fixed *fee*. It charges a fee for use of the facilities and for services running the game.

Fifth, at some cardrooms, including Artichoke Joe's, every player at the table pays a fee. The designated player and each of the other players pays a separate fee to the house. For the players, this offers the most consequential difference from banked games. It is a charge they do not have to pay at Nevada and Indian casinos and given a choice between two gambling houses, one with this charge and one without it, players would most likely choose to play at the one without the charge.

Section 330 was never intended to apply to games with players playing against themselves, where the house is a neutral party and paid a fee to conduct the game, has no interest in the outcome of the game, and where every player has equal opportunity to play in the designated player position, and where the designated player does not have to cover all bets but places a fixed bet in the amount he or she desires.

D. DIFFERENCES BETWEEN HOUSE BANKED GAMES AND DESIGNATED PLAYER GAMES HAVE PUBLIC POLICY IMPLICATIONS

House banked games have different public policy implications than designated player games, and the reasons for prohibiting house banked games over 100 years ago do not apply the same to designated player games.

1. THE PUBLIC POLICY CONCERN WITH BANKING GAMES IN 1872 WAS PROBLEM GAMBLING

The legislative history of Penal Code Section 330, and its predecessor uncodified statutes makes clear that the primary public policy issue being addressed was problem gambling.

In 1851, just months after California became a state, the Legislature passed a law requiring gambling to be licensed. Chapter 8 of the Laws of 1851, Section 1 prohibited "all banking games and games having a per centage" *except* at licensed gambling houses. The fee was $35 per table per month except in San Francisco and Sacramento, where a house with 3 or fewer tables had to a quarterly fee of $1,000, and a house with 4 or more tables had to a quarterly fee of $1,500.

In two cases, in 1852 and 1853, counties sought to collect delinquent license taxes from gambling houses, but the Supreme Court held that the statute provided no such remedy, and if gambling houses offered prohibited games without paying for the license, they were subject to indictment and punishment, not collection of unpaid license fees. *People v. Craycroft* (1852) 2 Cal. 243; *People v. Raynes* (1853) 3 Cal. 366.

In 1855, the 1851 Act was repealed, and banking games were prohibited. Various records reveal that the purpose for this prohibition was to prevent what we know today as "problem gambling," players who played with, and lost, more than they could afford to lose. This was especially a problem in house banked games, as opposed to pot games like poker between players. From early inception of the state, the courts had to deal with cases of problem gambling, and the courts adopted a common law rule that gambling debts would be unenforceable. See *Bryant v. Mead* (1851) 1 Cal. 441; *Gahan v. Neville* (1852) 2 Cal. 81 and *Carrier v. Brannan* (1853) 3 Cal. 328. (See *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, for a historical review of cases.)

No doubt that a growing occurrence of problem gambling would generate a sense that gambling was out of control. If you own rental real estate and your tenants lose all their money gambling, it is a problem. If you own a general store, and your customers run a tab but then have no money to pay you at the end of the month, it is a problem. A quick and easy solution to the problem is to prohibit gambling. Given the court's refusal to allow lawsuits to collect license fees, the problems caused by legal gambling outweighed the benefits, and gambling was outlawed.

One also sees this concern expressed in 1858, when the Legislature tried to lessen the penalties for gambling, and Governor John Weller vetoed the bill, decrying that "the young and unwary are still being ruined....How many fortunes have been squandered, hearths desolated, families separated, children impoverished, and prisons filled, by these gambling-saloons." (See Exhibit A.)

Similarly, in *History of California*, published in 1898, Theodore Hittell tells of a homestead act being passed to prevent improvidence, and then writes of gaming prohibitions "intended for the somewhat similar object of providing against improvidence." p. 69-70. (See Exhibit B.)

Various sources make clear that the driving force of these bills was not "moral" concerns. In a Minority Response to the April 17, 1855 bill, Senator E.J. Moore, a member of the Committee on Morals and Police, wrote that he "remembers no instance in which a people has been legislated into religion or morality..." (See Exhibit C.) He also wrote:

> "[T]he fact that the State has only recently discovered that it can no longer continue to collect licenses received from this source, under a recent decision of the Supreme Court, seems to indicate that the sudden absolute prohibition of the practices...is dictated rather by a sense of loss in revenue than by a moral sense against the practice."

The historian Hittell adds that although elements of the public would have been motivated by "moral" concerns, the lawmakers refused to let private and religious morality be their guide.

2. THIRD PARTY PLAYERS IN DESIGNATED PLAYER GAMES MITIGATE PROBLEM GAMBLING

In contrast to house-banked games, designated player games can mitigate problem gambling by the use of third-party players. In a designated player game, the designated player plays against all the other players at the table. These games are different than house-banked because rather that take on all comers, designated players place fixed bets.

The designated player is under social pressure from other players to post a bet sufficient to cover all the other bets. When a designated player fails to cover all bets and then loses, it deprives some of the other players of their winnings and frustrates them.

Why would a player not want to accept the designated player position? Because they don't want to take the risk of covering all the other bets and losing. An individual player is generally coming in for a night of entertainment. They will usually set a limit on how much they are willing to spend and will try to make their bankroll last as long as possible. To do this, they pace themselves. The designated player position poses a huge risk for them. Imagine a player with a $300 bankroll for the night. The players at the table are betting on average $20 a hand, and there are 8 seats. The designated player position would need to post a bet of $140 to cover seven other players. Our imagined player with the $300 doesn't want to play $140 on a single hand. Lose twice and he or she could end up going home early instead of getting to spend an hour or two playing. That's no fun.

The third-party player evolved naturally as a solution. This is a person or group with no connection to the house who have their own pool of funds sufficient to play in the designated player games and withstand the vicissitudes of the game. If the other players choose, they can pass on the opportunity to be the designated player in order to extend their playing time and thus their entertainment as long as possible. This is done by players exercising personal controls to limit their gaming. Further, it must be understand that in the Asian culture, the primary reason people play these games is for social interaction.

3. THE PROPOSED REGULATIONS WOULD EXACERBATE PROBLEM GAMBLING

If regulations are promulgated to require players to accept the designated player position, that will force at least some portion of the body of players to bet more than they otherwise would, causing more gambling and leading to more problem gambling. When players reach their limit too early in the night, they will raise that limit so they can play longer. This would contravene the original purposes of Section 330.

The fact that the Bureau would be reversing its current long-standing approval of these games and adopting a policy that will exacerbate problem gambling is not right. The fact that the Bureau is doing this not at the urging of the public, but at the sole urging of Indian casinos which have actual banking games and already make about ten times more profits than cardrooms and whose purpose is to monopolize gaming in the state makes these regulations unseemly.

4. OTHER PUBLIC POLICIES ARE ALSO AT STAKE

The designated player games further other public policies. For one, designated player games help to keep games honest. Concerns of cheating arise in card games, but having a neutral disinterested party conduct the game lessens these concerns. Games in Nevada or Indian casinos lack this feature.

As will be discussed below, third party players are required to be licensed and that furthers a public policy to reduce money laundering. One of the main goals of the licensing process of third party players is to vet their source of funds and to make sure it is not from criminal activities. Regular players are not licensed and their source of funds is often unknown. If the law requires them to play in the designated player position, that will create greater risks of money laundering. The current system lessens this risk.

E. GIVEN THE SIGNIFICANT DIFFERENCES BETWEEN HOUSE BANKED GAMES AND DESIGNATED PLAYER GAMES, AND THE DIFFERENT PUBLIC POLICY IMPLICATIONS, IT WOULD BE THE LEGISLATURE'S ROLE, NOT THE ROLES OF THE EXECUTIVE OR JUDICIAL BRANCHES, TO EXTEND STATUTORY PROHIBITIONS TO COVER DESIGNATED PLAYER GAMES

As shown above, Section 330 uses the term "banking game" in the context of house banked games. Thus, the issue of the legality of designated player games and extension of Section 330 should be one of policy, not "interpretation" of the 153 year old statute. "It is for the Legislature to make public policy and for the executive to carry out the policy established by the Legislature." *California Radioactive Materials Management Forum v. Department of Health Services* (1993) 15 Cal.App.4th 841, 870.

As the First District advised in *Tibbetts v. Van de Kamp* (1991) 222 Cal.App.3d 389, 396, "[T]he regulation of gambling in general and of poker in particular in California is a matter for the Legislature, not the judiciary. The continuing uncertainty arising from the stud-horse poker proscription in Section 330 may be alleviated by appropriate legislation."

Further, any attempt to expand Section 330 by regulation to cover designated player games would render the statute void for vagueness. A number of cases have raised this issue. In *People v. Carroll* (1889) 80 Cal. 153, a defendant challenged the statute as "too general and indefinite. An expert witness testified to the definition and one of the appellate judges would have held Section 330 to be invalid, writing:

> "... if the provision of the statute in question was so indefinite that the court could not tell the jury what facts would constitute a crime under it–that is, what the law of the case was–without the aid of a witness to tell *it*, then no conviction could be had under it.... That the general term 'banking game' has no definite meaning strikingly appeared on the trial of this case, –1. The witnesses who were erroneously examined on the subject differed in their opinions; and 2. The court itself did not know what it meant. Can a man be held to answer a criminal charge upon such a vague accusation?"

Similarly, in *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, concerning whether the designated game of pai gow is a "percentage game" proscribed by Section 330, Justice Newsom, Governor Newsom's father and a prominent judge, in a dissent, wrote, "... I am of the opinion that Penal Code Section 330 is void for vagueness, in that it does not adequately or reasonably define the conduct sought to be prohibited, and in a manner that does not encourage arbitrary and discriminatory enforcement."

F. INITIAL CASES UNDERSTOOD THAT THE TERM 'BANKING GAMES' MEANT HOUSE BANKED GAMES AND DID NOT APPLY TO DESIGNATED PLAYER GAMES

Introduction of designated player games in 1985 triggered numerous challenges by law enforcement, and resulted in four separate appellate court decisions. All four decisions reached the same conclusion–that designated player games were not prohibited banked games under Section 330 because the house was not a participant in the games.

1. *Sullivan v. Fox*

In January 1987, the First District decided *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, the first opinion on the legality of designated player games, and the most thorough and thoughtful analysis of Section 330 of any to come. The court ruled that a banking game is a game "***where the house is actually involved in play***" and concluded that designated player games are not banking games because the house is not a player in the games and has no interest in the outcome of the games.

Sullivan's analysis began, "Banking game has come to have a fixed and accepted meaning: the 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." The court contrasted this known meaning with the term "percentage game" which had no such precedent. To define "percentage game," the court analyzed how the two terms, "banking game" and "percentage game" relate to one another. The court wrote:

> [T]he Legislature adopted the 'banking or percentage game' test as a flexible means of reaching *two evils* perceived by the Legislature. The first pertains to situations where *the house is actually involved in play*, its status as the ultimate source and repository of funds dwarfing that

> of all other participants in the game. This is covered by Section 330's prohibition against banking games. The other situation finds the house in a more passive role. *Where the house is not directly participating in game play*, it can still be involved if it collects a percentage from the game. This percentage may be computed from the amount of bets made, winnings collected, or the amount of money changing hands. The percentage may be assessed collectively or individually. Regardless of the precise formula employed, the *house* benefits. The *house* has *no interest in the outcome of play*, but it is far from *disinterested* in the amount of play. It is in the enviable position of obtaining profit without incurring risk of loss from the actual play. *Its actual participation is nil, thereby distinguishing it from the banking game situation*, but it nevertheless gains. In any event, *the house derives benefit from commercial gambling, the elimination of which is the legitimate objective of statutes such as Section 330.*
>
> *Sullivan,* at 679 (Emphasis added)

Thus, *Sullivan* read Section 330 to focus on the house's involvement in the game, and to prohibit the only two possibilities that existed at the time: one, when the house is *directly involved in play as a participant in the game* and has *an interest in the outcome of the play,* and the other, *when the house is not directly participating in game play*, but is involved indirectly, sharing in the *amount of play*.

The court also explained the purpose of the law: to prevent the house from "deriv[ing] benefit from commercial gambling." The house is not to be involved either directly or indirectly in the game but was to be a "disinterested" party.

In pai gow, the house was not a participant in the game and so the game was not a banking game. Rotation of the designated player position among the players was irrelevant in this analysis. Nor was the fact that the designated player places a fixed bet.

Sullivan's construction of Section 330 serves to further a public policy that the house remain "disinterested" in the outcome of the games. As discussed above, when the house is prohibited from participating either directly or indirectly in the designated player games, its role is limited to that of an independent and neutral referee, to protect the integrity of the game. The house employs dealers and floormen to deal the cards and enforce the rules. They watch for mistakes and

for signs of cheating. The house has no interest in the outcome of the games and no share in the amount bet or won.

In contrast, when the house is a banker, there is no independent referee who runs the games and maintains the integrity of the game. The house has an interest in the game and hires employees to protect the house's bankroll. This is what distinguishes California games from those in Nevada and Indian casinos.

2. *Walker v. Meehan*

Seven months after *Sullivan*, the First District issued an opinion in *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, the second case concerning designated player games, and it closely adhered to *Sullivan*. In *Walker*, there was no claim of the game being a banking game. ("The issue of the definition of a banking game has not been raised in this appeal.") Nevertheless, the court affirmed the definitions of banking game and percentage game as stated by *Sullivan*, as well as the goal of the statute to prevent "the ***house*** [from] having an interest in the game, whether through acting as banker or taking a percentage of the wagers." *Walker*, p. 1296. The court further wrote, "The Legislature must have intended that the ***house*** not link its profits to the profits derived from gambling, whether or not it participated as the banker." (*Walker*, at 1300.) Like the *Sullivan* court, the *Walker* court read Section 330 to focus on the *house's role* and to prohibit the interest of the house in the game. Again, rotation of the designated player position was irrelevant to the definition of banking game as was the fixed bet by the designated player.

3. *Huntington Park Club Corp. v. County of Los Angeles*

In November 1988, the Second District Court of Appeal in Los Angeles issued *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, and followed the lead of the First District, invoking the *Sullivan* decision and holding that pai gow was not a banking game. The County of Los Angeles argued "that the house does not have to participate in the game in order for a banking game under Section 330 to be found," (pp. 249-250). The County argued that *Sullivan* defined "banking game" as a game where "the 'house' or 'bank' is a participant in the game," and that "the use of the disjunctive 'or' [applied the proscription] equally to the 'house' and the 'bank' as two separate and different types of participants." The court held that County had not presented any evidence that the house or any other entity operate a bank, and did not reach the legal question of whether that would constitute a banking game.

Clearly, the County's read of the phrase "'house" or 'bank'" in *Sullivan* was not consistent with how the *Sullivan* court meant that phrase. *Sullivan* held that a banking game is a game "where the *house* is actually involved in play" and that a percentage game is a game "[w]*here the house is not directly participating in game play*" but is indirectly involved. Further, even though players had the option to pass the position of designated player, the court did not even consider whether a player was a banker. It is obvious from these passages that when *Sullivan* used the phrase "house or bank," those two words were alternative words for the same person, namely the player who serves as both exhibitor and banker, whether the "house" or the absence of a "house", the person offering the game and was not meant to describe a player who was not the dealer.

Again, the only issue in determining if this was a banking game was whether the house participated in the game. Rotation of the designated player position was not an issue.

4. *City of Bell Gardens v. County of Los Angeles*

In July 1991, the Second District Court of Appeals issued a second decision, *City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1583. In December 1988, just a month after the *Huntington Park* decision was issued against the County, the Sheriff, acting contrary to that court's decision, raided a number of cardrooms and arrested players and dealers participating in pai gow games for violation of Section 330. The appellate court summarized the discussion in *Huntington Park*, quoting the definition from *Sullivan* and noted that the County "had no new facts to establish that pai gow is a banking game." The court ruled that the County was barred from relitigating the issue under the doctrine of res judicata, and sanctioned the County. The court further wrote that the designated player position rotated and that *Huntington* must have taken that into account. The decision reads more as a rebuke to the Sheriff's disrespect of the courts *Huntington* decision, than as any further guidance on the law.

G. THESE INITIAL CASES ARE ALL CONSISTENT WITH A WIDER GROUP OF CASES THAT FOCUS THE ISSUE OF BANKING ON WHETHER THE HOUSE HAS AN INTEREST IN THE OUTCOME OF THE GAME

The four cases reviewed above are all consistent with a wider group of cases on Section 330 that focus the banking game issue on whether the house has an interest in the outcome of the game.

In one of the earliest cases, *In re Lowrie* (1919) 43 Cal.App. 564, the court held that where the defendant ***both*** "conducted the game" and maintained a "bank", the game was a banking game.

In *People v. Ambrose* (1953 122 Cal.App.Supp.2d 966, the issue was whether or not panguingui, a game similar to modern gin rummy, was a banked game, and the court held that where "the establishment had ***no interest in the outcome of the game,***" the game was not a banking game.

This phraseology from *Ambrose* became central in the initial four cases to rule on designated player games. In the initial three cases, the cardrooms obtained preliminary injunctions, and those injunctions contained the following finding, "Plaintiffs do not participate whatsoever in the actual play of the game and ***have no interest in the outcome of play***." In *Sullivan*, the court captured this meaning when writing, "**Its actual participation is nil, thereby distinguishing it from the banking game situation**." In *Huntington*, the court described the lower court judgment, writing, "The court found pai gow as played under the injunction was not a banking game under Section 330 since the house (one of the plaintiffs) does not play, does not cheat, and does not pay less than full odds. In other words, the plaintiffs ***have no interest in the outcome of the game*** or in who wins or loses."

In *Western Telcon, Inc. v. Calif. State Lottery* (1996) 13 Cal.4th 475, the Supreme Court ruled that a game offered by the California State Lottery was legally a banking game, not a lottery, and this result turned on the fact that the lottery did not just put up a prize and give up any interest in the outcome, but structured the payoff such that it did retain *an interest in outcome of the games*. In the course of the opinion, the court referred to having an interest in the outcome of the game 25 times. The court wrote:

> "In a banking game, in contrast, the *operator* does compete with the other participants: 'he is the one against the many.' (*People v. Ambrose*, supra, 122 Cal. App.2d at p. Supp. 970.) The **operator thus has a direct interest in the outcome of the game**, because the amount of money the operator will have to pay out depends upon whether each of the individual bets is won or lost."

Last, in *Hotel Employees and Restaurant Employees v. Davis* (1999) 21 Cal.4th 585 *("HERE")*, the Supreme Court applied the same rule to Proposition 5, a statutory initiative which would have allowed Indian tribes to conduct player pool

games, where the house holds pools of funds from player bets and pays winnings out of those funds, but fronts monies as necessary. Indian gaming proponents argued that these were not *house-banked* games. However, the court ruled:

> The tribe retains an **"interest in the outcome" of play** (*Western Telcon*, supra, 13 Cal.4th at p. 488, 53 Cal. Rptr.2d 812, 917 P.2d 651) even if it "neither has nor can acquire any interest" in the players' pool itself, which is "irrevocably dedicated to the prospective award of prizes in authorized gaming activities" (Gov.Code, § 98004, model compact § 2.16; accord, id., § 98006, subd. (a)). The more the players' pool collects from losers and the less it pays to winners, the lower the tribal operator's costs—the less likely it will be compelled to lend seed money to the players' pool in the future, the more likely it will be able to obtain repayment of seed money lent to the pool in the past. Conversely, the less the pool collects and the more it pays, the higher the operator's costs. Of necessity, moreover, the operator of a casino authorized under Proposition 5 must be concerned with maintaining ample funds in the players' pool or pools, since depletion of those funds will require lower payouts, hence worse odds on players' bets, hence less action to generate fee revenue for the operator. Even under Proposition 5's players' pool prize system, therefore, the "house" retains an **interest in the outcome of play.**

This case turned on the fact that the *house* had an interest in the outcome of the game. That made it a banking game in violation of Section 330. That remains true of games in Nevada and Indian casinos but not true of designated player games in California cardrooms.

H. IN 1991, THE LEGISLATURE ACQUIESCED TO THE COURTS' INTERPRETATION THAT SECTION 330 DOES NOT APPLY TO DESIGNATED PLAYER GAMES

In June 1991, the Legislature amended Section 330 in Assembly Bill 97, but did not alter the definition of the term "banking game" as construed in the court cases. The purpose of the bill was to delete stud-horse poker as one of the games prohibited by name. This was done to conform the statute with the holding in *Tibbetts v. Van de Kamp* (1990) 222 Cal.App.3d 389.

When the Legislature passed AB 97, it was well aware of the case law. Three of the four appellate court opinions on the term "banking game" had been issued, and the *Tibbetts* case had quoted the definition of banking game from *Sullivan*.

The Legislature's action in amending the statute and not amending the term "banked game" as construed in the case law, constituted acquiescence to the court's construction of that term. "It is well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734. Here, the Legislature amended the statute specifically to conform to a case that had recited the definition of banking games. Therefore the Legislature clearly acquiesced in the judicial construction of this term.

The inference of acquiescence is especially compelling when as here the "Legislature has been very active" in a particular "area of law." *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1015. From 1993 to 1997, the Legislature considered, developed, and enacted the Act, a major piece of legislation, involving a series of bills, numerous committee hearings, and much floor debate and was well aware of the designated player games. Further, during this period, the Legislature enacted a moratorium on legalization of more cardrooms. The lack of any attempt to modify the court's construction of "banking games" strongly compels an inference of acquiescence.[3]

I. IN 1998, *OLIVER* ATTEMPTED TO EXPAND THE DEFINITION OF BANKED GAME BASED ON NEW POLICY CONCERNS AND IGNORED THE LEGISLATURE'S ACQUIESCENCE TO THE PRIOR COURT DECISIONS WHICH HAD SETTLED THE LAW

The ISOR for the proposed regulations relies heavily on *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, a decision out of the Second District which ignored both *Sullivan*'s construction of "banking game" and the Legislature's clear acquiescence to *Sullivan*, and asserted a different public policy concern, all in

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[3] We note that SB 8 (Stat. of 1997, ch. 867) which enacted the Act also added provisions to the Welfare and Institutions Code to create a State Program of Problem Gambling, thus addressing concerns of problem gambling with regulation.

an attempt to upend settled law and expand the definition of banking games.

Oliver involved a game called Newjack, a variant of blackjack. Just like in the prior cases, Newjack involved a designated player who would play one-on-one against each of the other players at the table. Just like in the prior cases, the designated player had to post a fixed bet and was at risk only for the amount bet. And just like in the prior cases, the designated player position rotated continuously and systematically around the table.

Despite the prior cases, and the Legislature's acquiescence to them, County Counsel and the Attorney General issued opinion letters that Newjack violated Section 330, and the Sheriff's office obtained a search warrant. In response, the inventors and distributors of the game filed suit. The trial court ruled that the game was not a banking or percentage game but that it violated the prohibition against twenty-one.

The appellate court affirmed the result but on a different basis, holding that the game was a banking game. The opinion cites *Sullivan* with approval and repeats that the Legislature adopted the "'banking or percentage game' test as a flexible means of reaching two evils." The court twice quoted *Sullivan*'s definition of banking game, including the sentence that in a banking game, the "house is actually involved in play" (pp. 1404 and 1407) and twice cited *Sullivan's* definition of percentage game, including the line that a percentage game is "where the house is not directly participating in game play...." (p. 1404.) Further, the court acknowledged that in Newjack, the house was not involved in play and that under the rule set down in *Sullivan*, the game was not considered a banking game. (p. 1407.)

However, the *Oliver* court then proceeded to announce a different interpretation of Section 330, not based on construction of the term "banked game" or on construction of the term "banked game" in context of the whole statute, as *Sullivan* had done, but based on a short conclusory summary of an expert opinion mentioned in the *Tibbetts* case. Based on that summary of an expert opinion letter, the *Oliver* court found that the legislature's concern in 1872 was the "advantage" held by the banker. The court held that if there were a potential for the designated player position, and thus the "advantage" to stay with one player "for a long time," the game was a banking game. The *Oliver* court then held that the rules regarding rotation made it possible for a designated player to function as a bank. The court wrote: "[A] game will be determined to be a banking

game if under the rules of that game, it is possible that the house, another entity, a player, or an observer can maintain a bank or operate as a bank during the play of the game." The court reasoned that if the other players at the table decline to accept the designated player position,

> "A player with a significant amount of money to bet can hold the position of player-dealer *for a long time*, and thus keep the inherent playing advantage for him or herself. The effect would be a banked game because it could then be said of such a player that he or she is 'taking on all comers, paying all winners, and collecting from all losers." (p. 1409.)

The California Supreme Court denied review, with three of the seven judges voting to grant review and falling one vote short of granting review.

1. CRITICISMS OF *OLIVER*

The *Oliver* decision is deeply flawed, both in what it says and in what it omits. I list a number of significant problems with the decision.

1. Refusal to Invoke Res Judicata and Collateral Estoppel Against County

The court summarily overrode what appears to be a strong argument for collateral estoppel. The County had brought a criminal case against plaintiffs for violating Section 330, and the court had sustained plaintiffs demurrer and dismissed the case. Plaintiffs argued in the civil case that collateral estoppel should result in a ruling in their favor, but the court wrote, "Here, strong public interest in the regulation of gambling requires that we examine for ourselves the legality of the game of Newjack." The court does not further elucidate the types of cases in which this exception has been invoked, and the case cited, *Sacramento v. California* (1990) 50 Cal.3d 51, 64 involved a city and the state arguing over issues of state reimbursement of local government expenses, a subject thoroughly infused with public interest. The *Oliver* case was far different, involving a single private (non-governmental) party, and it is far from clear why public interest precluded collateral estoppel.

2. Factual Situation Was No Different Than in Prior Cases

The County argued that for the first time the rules regarding rotation require the court to consider whether a person other the house maintains and operates a bank. However, the rules governing rotation were no different than in any of the initial four cases. It was always clear that rotation of the designated player position is just an offer of the position. When *Sullivan* commenced in November 1985, the County of San Mateo's filed a Memorandum of Points and Authorities In Opposition to Plaintiff [Artichoke Joe's] Motion for a Preliminary Injunction and attached to it a Declaration of Donald James Moore, the police investigator, in which he wrote, "The bank is determined in each hand by any one of the eight players who ***accepts*** the marker entitled 'Dealer' from the house dealer." (See Exhibit D, last line of p.1 of the Declaration.) Similarly, on page 4, ¶6, item a refers to "the player ***accepting*** the marker." Clearly the authorities always knew that acceptance of the player-dealer position was optional. In prior cases, the rotation of the designated player position was moot because the statute was construed to focus on the house.

3. Failure to Honor Legislature's Acquiescence to the Prior Cases

Oliver does not recognize that in 1991, the Legislature acquiesced to the *Sullivan* interpretation of Section 330 thereby settling the statute's construction.

4. Failure to Apply Element of Banking Game That Banker Takes All Bets

One of the elements of a banking game is that the banker takes all comers and accepts all bets. In contrast, in designated player games, the designated player places a *fixed bet* that may or may not be sufficient to cover all bets at the table. The court acknowledged this in footnote 5, but then ignored that this element of a banking game was not satisfied.

5. Reliance on Legislative History was Improper

The court's decision heavily relied on a claim that the purpose of Section 330 was to prohibit the "advantage" in the game, and that designated players could enjoy an advantage. However, the court's resort to legislative history was improper, and its analysis of legislative history was highly improper.

a. Immediate Resort to Legislative History, Instead of Attempting to Construe the Statute in Context Violated Rules of Statutory Construction

The court failed to follow the rules governing statutory construction. Those rules require a court to look at the plain language of the statute, at the disputed language in the broader context of the whole statute, and if necessary, to legislative history. In *Sullivan*, the court had read the term "banked game" in context of the rest of the statutes, namely the prohibition on "percentage games" and had resolved the ambiguity at that level. *Sullivan* had looked at the two types of games being prohibited, "banking games" and "percentage games" and had found them to complement one another to prevent any house involvement. *Oliver* did not follow that analysis. It recounted that analysis but then ignored it. Rather, the court immediately resorted to an analysis of legislative history.

b. Failure to support conclusions regarding Legislative History

The *Oliver* court's analysis of legislative history is even more problematic. The court relies entirely on a conclusory sentence about the legislative history of Section 330 from a different court opinion. In describing the types of gaming prohibited by Section 330, the court writes:

> Section 330 was enacted in 1872. According to expert testimony in *Tibbetts v. Van de Kamp*, supra, 222 Cal.App.3d at p. 393, 271 Cal.Rptr. 792, "the common thread among the games specifically listed in Section 330 at the time of its enactment was that they were casino games, i.e., banking or percentage games, which were deemed especially 'suspect' because, among other reasons, the house had an *advantage* and limitless funds."
>
> *Oliver* at 645 (emphasis added).

In footnote 6, the court then invokes that undisclosed legislative history and interprets the statute to require actual rotation to avoid the "advantage."

The legislative history was not directly relevant in *Tibbetts* because of the stipulation that Texas Hold'Em "is not a banking or percentage game." (Fn 4) Further, the *Tibbett's* court criticized other legislative history, writing, "The

legislative history as presented by the parties is far from definitive as it is based largely upon newspaper articles. Generally, newspaper articles are inadmissible to prove their contents because of the hearsay rule (*Stoneking v. Briggs* (1967) 254 Cal. App.2d 563, 576 [62 Cal. Rptr. 249]), and should not be authority for the definition of criminal offenses."

Oliver's use of this Legislative History presents much more serious issues. First, the court does not examine and consider for itself the contents of the actual documents comprising the legislative history. All it does it recount a conclusion from an expert in another case without any of the evidence relied on by that expert. Legislative history poses a factual inquiry. What were these documents and what exactly did they say? The *Oliver* court doesn't discuss the evidence. Second, the use of an "expert" to determine legislative history is problematic. Construction of the statute is a legal question, not subject to expert opinion. An expert's interpretation of the legislative history has no factual weight. It is nothing but legal argument. Third, the public policy which the court thinks motivated the 1872 Legislature is different from the policy which we see in the legislative history and which we have presented in detail earlier in this letter. As we have shown, there is evidence of a pervasive concern with problem gaming and we are aware of no evidence that the Legislature's concern was with an advantage in the games. If the concern was with an advantage, the Legislature could have prohibited games where one player has a built-in advantage. In this regard, a professional poker player will have an advantage over most other less-skilled players, but there is no prohibition against play by professional gamblers.

As discussed above, a requirement that players accept the designated player position increases the risk of problem gambling, an important fact which the *Oliver* court did not consider. It is the province of the Legislature to weigh policy considerations, and the existence of such questions is a strong indication that in "expanding" interpretation of Section 330, the *Oliver* court was outside its boundaries and treading on the Legislature's province. The proposed regulations, in relying on *Oliver*, do the same.

6. *Oliver* Does Not Acknowledge That it Created a Split in Authority with *Sullivan*

The *Oliver* opinion is inconsistent with *Sullivan*, but does not acknowledge that. *Oliver* quotes *Sullivan's* key holdings as if it is following them. It then claims to be "extending" the analysis, but that claim is misleading. *Sullivan* ruled that the

term banking game means a house banked game, and only a house banked game. *Oliver* rules to the contrary that games where players serve in a role similar to a banker are also banked games. That is inconsistent with *Sullivan* and not just an "extension" of *Sullivan.* *Oliver* created a split in authority between the First District Court of Appeal in the Bay Area and the Second District in Los Angeles, and this split in authority remains unresolved.

7. General Criticisms

In construing Section 330, the *Oliver* court is attempting to apply a statute designed to address house banked games onto very different games which are not house banked. The court is trying to fit a round peg into a square hole, and it doesn't fit. Today the house is in a neutral role and has no interest in the outcome of the game. Further, the opportunity to occupy the designated player position rotates, continuously and systematically, and every player has an equal opportunity to occupy the position. The ability of players to pass on the opportunity allows them to limit their risks and control their pace. Government should promote that. Further public policies have changed since 1872. Controls are in place to limit problem gambling and certainly the Indian casinos with revenue 10 times as large as cardooms have to be a larger generator of this problem.

J. THE LEGISLATURE'S REACTION TO *OLIVER*: PART I–AN ATTEMPT TO OVERTURN OLIVER

In reaction to the *Oliver* decision, the Legislature changed the law with a stated goal to protect the cardrooms. Whereas the Legislature had no negative reaction to the interpretation of Section 330 by the *Sullivan* line of cases, after *Oliver* was decided, the Legislature immediately took steps to overturn that decision.

1. AB 1417–The immediate response to *Oliver*

In July 1999, the Legislature passed AB 1417. This bill would have defined banking game as "where the house or gambling establishment is (A) a participant in the game, with an interest in the outcome of any wager, and (B) covers all bets made in the game, paying all winners and collecting from all losers." Banking games were to mean "house banked." Further, the statute provided a safe harbor so long as the designated position was offered to other players after no more than five hands.

The legislation included the following statement:

> The Legislature finds and declares that Section 1 of this act is intended to modify the respective holdings of *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397 and *Kelley v. First Astri Corp.* (1999) 72 Cal.App.4th 462, as to what constitutes a "banking game," but only with respect to controlled games conducted within licensed gambling establishments.

The bill also had an urgency clause based on the fact that "the cases of *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397 and *Kelley v. First Astri Corp.* (1999) 72 Cal.App.4th 462 have caused confusion with regard to the status of the law concerning the operation of player banks in licensed gambling establishments in California."

Governor Davis vetoed this bill but his veto message supported the substance and purpose of the bill. He wrote:

> "I applaud the effort of the author to find an appropriate way to allow card clubs to function in light of recent court holdings".

Governor Davis did not object to limiting banking games to house-banked games or to allowing players to hold the designated player position for up to five rounds before offering it to the next player. However, as he wrote, "on the advice of Attorney General Bill Lockyer," he asked the Legislature to insert a licensing and oversight procedure for persons or businesses "who would perform the functions of the bank," and that with those changes, he would sign the bill.

So whereas the Legislature had had no problem with the *Sullivan* line of cases, the Legislature immediately sought to modify *Oliver*. Originally, the only delay was to provide for licensing and oversight of the third party players. The Governor's message makes clear not just an expectation but also an acceptance that third party players would be serving as designated players most of the time. This created the need for their licensing and oversight.

K. COURT DECISIONS CITING TO *OLIVER*

Before reviewing subsequent actions of the Legislature in reaction to *Oliver*, we need to review two court decisions issued in 1999 which cited to *Oliver*, both

in dicta. Both of those cases share all the defects in *Oliver* as well as have their own defects. Neither can rehabilitate *Oliver*.

1. *Kelly v. First Astri Corp.*

In May 1999, the Fourth District issued *Kelly v. First Astri Corp.(1999)* 72 Cal.App.4th 462. A gambler brought a tort suit against managers of a casino located on Indian lands (Sycuan) seeking recovery of losses suffered in May 1993 when he served as the banker in games of 21. This was years before Proposition 1A was passed colorably allowing Class III banked games at Indian casinos, and was played with a rotating designated player position, the same as in cardrooms. Plaintiff alleged that the casino allowed games with marked cards, and that he had lost $120,000. The principal issue was whether the courts entertain suits to recover gambling losses, and after discussing at length 10 precedents, only one of which was favorable to the plaintiff, the court held that California has a "broad, strong policy against judicial resolution of civil claims arising out of gambling contracts or transactions," and so would not entertain the suit. Kelly also argued that the gaming was legal under *Sullivan*, but the court answered both that the game was illegal under *Oliver* and that the public policy against judicial resolution of gambling disputes "applied to all forms of gambling, whether legal or illegal," thus creating alternate holdings and arguably rendering the first ruling as dicta. The court never considered *Sullivan*'s reasoning and refrained from quoting the many passages that limit banking to house banking. In discussing *Oliver*, the court wrote that Oliver was "decide[d] as a matter of first impression."

The court was obviously unaware of the split in authority between *Sullivan* and *Oliver*. It mistakenly treats *Oliver* as a case of first impression, and in a long otherwise very scholarly opinion, ignores the reasoning in *Sullivan* and simply follows *Oliver*.

Note a few things. First, Indian casinos were at that time conducting what they now claim are illegal games. Second, *Kelly* illustrates exactly why regular players should not be forced to take the designated player position. When serving as designated player, a person can lose a tremendous amount of money. The proposed regulation will exacerbate problem gambling in the state. Third, *Kelly* clearly stated its disagreement with the one prior appellate decision. This is in contrast to *Oliver*, which did not make clear that it was not following *Sullivan*.

2. *Hotel Employees & Restaurant Employees v. Davis*

Earlier, we discussed *HERE v. Davis* (1999) 21 Cal.4th 585, which held that player pooled card games allowed by Proposition 5 were banked games. The court ruled that "the players' pool is a bank in nature if not in name." The court further stated in dicta that a banking game may be banked by someone other than owner of the gambling facility, citing *Oliver*. However, the court showed no awareness of the split in authority between *Oliver* and *Sullivan,* let alone any intent to resolve that split. The court also showed no awareness of all the defects in *Oliver*, especially its reliance on unstated legislative history. Nor did the court show any awareness of AB 1417 which the Legislature had passed weeks before the *HERE* decision.

There are a few items to note in *HERE.* First, the Indian gaming tribes included findings in Proposition 5 that the player pooled games were not similar to the type of gaming in Nevada and New Jersey because casinos in Nevada and New Jersey have **"house-banked games."**[4] Second, the court noted that Legislative Counsel had issued an opinion concluding that Proposition 5 would be invalid because it would authorize casinos of the type in Nevada and New Jersey.

L. THE LEGISLATURE'S REACTION TO OLIVER, PART II

Although the courts had ignored the Legislature's 1991 acquiescence to *Sullivan* and its attempt to overturn *Oliver* in July 1999, the Legislature acted three more times to preserve *Sullivan* and to modify *Oliver*.

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[4] Government Code 98001(c) still reads:

> "The people of the state further find that casinos of the type currently operating in Nevada and New Jersey are materially different from the tribal gaming facilities authorized under this chapter, including those in which the gaming activities under the Gaming Compact are conducted, in that the casinos in those states (1) commonly offer their patrons a broad spectrum of ***house-banked games***, including but not limited to ***house-banked card games***, roulette, dice games, and slot machines that dispense coins or currency, none of which games are authorized under this chapter....

The tables games at the cardrooms which the tribes now argue are similar to games at casinos in Nevada and New Jersey are far less similar to games in Nevada and New Jersey than the games the tribes were trying to get approved.

1. Assembly Bill 1409

The Legislature's second attempt to overcome *Oliver* came in September 1999, just a month after the *HERE* decision, with the passage of AB 1409. AB 1409 would have limited the prohibition to house-banked games and authorized cardrooms to operate games with a player-dealer position "provided that this position is continuously and systematically rotated among seated players." AB 1409 would have added a definition of "player dealer" and "controlled game featuring a player-dealer position" to Section 19805 of the Act reading:

> "Player-dealer" and "controlled game featuring a player-dealer position" refer to a position in a controlled game, as defined by the approved rules for that game, in which players are ***afforded the temporary opportunity*** to wager against multiple players at the same table, provided that this position is continuously and systematically rotated among the seated players in the game.

Rotation had always been an offer of the temporary opportunity to play in the designed player position, and the bill required nothing more than an offer of the opportunity. There was no requirement that more than one player must accept the position. The bill further allowed the house to contract with third party players provided that any such contract had to be approved by the Bureau. The Commission was also given authority to license the third parties players, thus allowing for verification of their source of funds, a clear public policy interest. The bill also amended the findings in the GCA to provide that California disfavored "house-banked games" not banked games.

AB 1409 contained the following findings and declaration: "The Legislature finds and declares that this act is intended to effectuate the holding in *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, in which the court, at pages 1408 to 1409, inclusive, distinguished the game of Newjack, which it held to be an illegal banking game, from the game of pai gow, which it held could be legally played, based on the fact that in the game of pai gow, the position of player-dealer 'continuously and systematically rotates among each of the participants.'" In this way, the Legislature attempted to preserve *Sullivan* and to limit *Oliver*.

Governor Davis vetoed AB 1409. After the Supreme Court had ruled in *HERE*, the Legislature had placed Proposition 1A on the March 2000 ballot, and

Governor Davis wrote that he wanted to let voters speak on Proposition 1A before addressing any further gaming issues.

1A. The Public Speaks on Proposition 1A

In March 2000, prior to the Legislature's next attempt to overturn *Oliver*, the voters approved Proposition 1A, amending the Constitution to allow Indian casinos in the state to operate slot machines and conduct banked card games, the same as in Nevada casinos. The voters were undoubtedly influenced by $100 million worth of TV ads.

Proposition 1A constituted a huge exception to Section 330. It followed the legalization of the State Lottery in 1984 and signaled an acceptance by the electorate of a massive expansion in legalized gambling in the state as well as acceptance of regulation in place of prohibition.

It is noteworthy that in the Voter Information Guide for Prop 1A, the argument in favor of approval of the Proposition argued that banked games are "where the ***house*** has a stake in the outcome of the game." (See Exhibit D.) This was the Indian tribes' understanding of the term "banked games" at the end of 1999.

2. AB 1416–Enactment of Section 330.11

In August 2000, the Legislature passed AB 1416. This had been introduced as a horseracing bill, was gutted and amended in the Senate, and then was heavily amended seven more times before finally passing the Senate at the end of session.

As passed, the bill defined the term banking game, provided a safe harbor from being considered a banking game, allowed cardrooms to use third party players, and required the licensure of third party players.

The term banking game was defined in part as a game "in which the house, a player, or other entity is a participant in the game, taking on all comers, paying all winners, and collecting from all losers."

The bill also added a definition of "player-dealer" and "controlled game featuring a player-dealer position" almost identical to the definition originally in AB 1409, as follows:

> "Player-dealer" and "controlled game featuring a player-dealer position" refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are ***afforded the temporary opportunity*** to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game.

This definition made clear that rotation meant an offer of the opportunity to play in the designated player position. However, the definition "banking game" was contrary to the holding in *Sullivan*, which had included games only in which the house was the banker and excluded games in which a player is the banker. This definition was not included until August 30, 2000 in the last of the eight amendments of the bill, just a day before it passed both houses, and some clubs, including Artichoke Joe's, which had previously supported the bill, immediately objected that this amendment would reverse *Sullivan*. We were told that the bill needed to pass because of all the other provisions in the bill, and that this part of the bill would be repealed in 2001. The bill also included the following findings:

> In 1983 and 1984 California card clubs played games with cards involving a player-dealer position in which players were afforded the temporary opportunity to wager against multiple players at the table where the player-dealer position continuously and systematically rotated among the players, prior to the amendment of Section 19 of Article IV of the California Constitution by the California State Lottery Act in 1984. This method of play was approved by the Courts of Appeal in *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, *City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1563, and *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241.

The findings discuss that in these games all players are afforded the "opportunity" to play in the designated player position confirming the Legislature was requiring only an offer of the opportunity to be the designated player.

The Governor signed AB 1416, but issued a signing statement that the bill included "language that may be inconsistent with authoritative decisional law and, according to the Attorney General, will require further clean-up legislation to ensure it cannot be interpreted incorrectly. I have been assured by the author that such cleanup legislation will be introduced early in the next session."

The Attorney General had noted that "the condition that the bank serve as the 'ultimate source and repository of funds, dwarfing that of all other participants in the game' incorrectly suggests that the character of a game as a 'banking game' is dependent on the size of the bank in comparison with the resources of the other participants, rather than the possibility that a participant with any amount of capital may function as a bank at all. The Attorney General had written, "The inclusion of this language prevents us from rendering an unqualified opinion that the bill is not unconstitutional."

3. AB 54–Refinement of Section 330.11

In September 2001, the Legislature passed a fourth and what would be the final bill addressing *Oliver*. AB 54 amended Penal Code Section 330.11 and Business & Professions Code Section 19805, by deleting the definition of banking game completely and leaving these two statutes as just a safe harbor provision. Section 330.11 sets out a safe harbor and requirements to meet a safe harbor, but contains no definition of the term "banking game." The definition of "player dealer" and "controlled game featuring a player-dealer position" was left in Section 19805 of the Act.

AB 54 also confirmed and made a small amendment to the prior Legislative findings, to read:

> In 1983 and 1984 California card clubs played games with cards involving a player-dealer position in which players were afforded the temporary opportunity to wager against multiple players at the table where the player-dealer position continuously and systematically rotated among the players, prior to the amendment of Section 19 of Article IV of the California Constitution by the California State Lottery Act in 1984. This method of play was not found to be inconsistent with current law by the Courts of Appeal in *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, *City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1563, and *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241.

In the end, *Sullivan* was left intact, and the split in authority between *Sullivan* and *Oliver* unresolved.

M. CONCLUSION

In conclusion, the Legislature's acquiescence to the *Sullivan* line of cases remains valid, and therefore, the authority of *Oliver* is questionable. *Oliver's* disregard of the Legislature's clear acquiescence to the *Sullivan* line of cases can't invalidate that acquiescence, especially given the Legislature's repeated attempts to overturn *Oliver*. *Oliver* is a house of cards. At the very least, there is a split in authority on the legality of designated player games between *Sullivan* to which the Legislature acquiesced in the First District and *Oliver*, with all its defects including failure to follow rules of statutory construction and unsubstantiated claims as to Legislative History of the statute, and the Legislature's attempt to modify it. In either event, the regulations are inconsistent with Section 330.

III. CONTRARY TO IMPLICATIONS IN THE ISOR, THE PROPOSED REGULATIONS ARE NOT MANDATED BY PENAL CODE SECTION 330.11

The prior section addressed the inconsistency of the proposed regulations with Section 330 but included discussion of the passage and amendment of Penal Code Section 330.11. This section addresses the inconsistency of the proposed regulations with Section 330.11 and 19805(c) of the Act which are identical.

The fact remains that Section 330.11 is just a safe-harbor provision. It sets forth requirements in order to qualify for safe-harbor treatment. Section 330.11 does not purport to set forth a definition of "banking game" nor to set forth any elements of that term. The regulations in requiring rotation and requiring that multiple accept the designated player position are inconsistent with Section 330.11.

The ISOR treats Section 19805(c) of the Act as imposing substantive requirements but that is not correct. It exists in the definitional section, but as discussed, the only other use of the term "banking game" in the Act is to provide what regulations would be needed if banking game were legalized. Further, that Section 19802 is just a finding and contains no substantive law governing cardrooms. So 19805(c) has no relevance to any requirements.

The ISOR also relies on Section 19805(ag) of the Act. That section is also a definition, and it reads,

> "Player-dealer" and "controlled game featuring a player-dealer position" refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game.

The ISOR claims that this definition "has two requirements." See p. 3 of 10. One, "the opportunity to [be the designated player] is temporary." Two, "the opportunity to act as the [designated player] must be rotated..." The ISOR discusses these and comes to two conclusions. First, the ISOR concludes "a person cannot act as player-dealer indefinitely." Second, "the player-dealer position must be rotated among the other players seated at the table." Neither of these purported exclusions follow from the two requirements in the statute.

While it is true that the opportunity to play as the designated player must rotate, nothing in Section 19805(ag) precludes the position staying with one person if everyone is offered the opportunity to play in that position and declines the opportunity. Second, while the definition requires rotation, under that statute, rotation consists of an offer of the opportunity to be the designated player. Nothing in Section 19805(ag) requires acceptance by more than one player at the table.

Further, such an interpretation conflicts with licensing of the Legislature's requiring licensing of third party players. The reason for requiring their licensing was that they were expected to serve as designated players without limit, and the Legislature wanted them licensed in order to serve in this capacity.

The regulations also are inconsistent with the Bureau's interpretation and enforcement of the law for the last 25 years. The Legislature hasn't stepped in. The electorate has not complained about this. Those are no new court decisions. To the contrary, the voters have legalized banking games, at least on Indian lands. This leads to the inescapable suspicion that the only reason for the Bureau to propose these regulations is to further attempts by Indian tribes to monopolize gaming in the state.

IV. COMMENTS ON SPECIFIC SECTIONS

A. Reg. 2076(a)

(1) Reg. 2776(a)(1)

This regulation would require that the designated player position be offered to the "other seated players at the table before every hand."

The word "other" lacks a referent and therefore, the regulation as worded makes no sense.

Ever since the designated player games were developed in the 1980s, the designated player position has rotated every other hand. A person is given the opportunity to play in this position for two hands. The Bureau has always approved these games, and this raises a question why such a long-standing practice would suddenly change. The ISOR does not acknowledge the long-standing practice of rotation every two hands, and there is no explanation why that long-standing practice is suddenly deemed insufficient. Rather, the ISOR has a conclusory sentence that this is "necessary to ensure that the player-dealer position is continuously rotated." Why is it necessary? Conclusory statements do not satisfy statutory requirements to explain necessity.

The *Oliver* case offers no basis for this regulation. *Oliver* expressed no problem with rotation of the offer every two hands. *Oliver* was focused on frequency of acceptance of the offer, not frequency of the offer. Nor has any other case suggested that the offer should be made more often.

(2) 2076(a)(4)

We have asserted objections to this provision in detail in the prior parts of this letter. We add here that the requirements for acceptance of the designated player position by "at least two players other than the TPPPS every 40 minutes" is arbitrary. Why at least two players? Why wouldn't one be enough? Why every 40 minutes? Why not 45 minutes? Or 50 minutes? Or 60 minutes as the Bureau attempted to require in 2016? There is no evidence of why these requirements are reasonably necessary at all and no evidence for the particular numbers of players and length of time. There is no basis to require acceptance of the designated player position at all, but even assuming there is, there is no basis to determine at

what point a player, even a third-party player, become a "bank." What makes a player a bank when playing other players?

(3) Reg. 2076(a)(5)

This regulation would require that a game stop if rotation of the designated player position has not occurred as required by regulation 2076(a)(4). Given that this section is dependent on the requirement in the prior section, and given that the prior section is arbitrary, this section is subject to the same infirmity.

Further, this section makes no provision for what happens after closure of the game. Can the table ever open again? If so, does it have to wait some period of time or can it reopen right away? There is nothing in the regulations to prohibit the table from immediately reopening.

B. Regulation 2076(b)

1. Reg. 2076(b)(1)

This regulation would prohibit a person from wagering directly against the third party player when the third party is not occupying the designated player position. The ISOR makes the conclusory statement that this is necessary in order to prevent the TPP from maintaining or operating a bank when not occupying the designated player position. However, the regulation would prohibit a one on one bet between two people, and banking is taking on multiple players. This regulation is not authorized or necessary.

2. Reg. 2076(b)(2)

The regulation appears to be missing a word or words. It appears that this regulation would not allow the third party player "to settle" any wagers at the table when the third party is not occupying the designated player position. The word "to" is missing. In addition, as with the prior regulation, this regulation would prohibit a one on one bet between two people, which is not "banking." Banking is taking on multiple players, which this is not. Therefore, this regulation is not authorized or necessary.

In addition, the word "settle" is not clear. In casinos, the house settles the bets, by collecting from the losers and paying off the winners. In California

cardrooms, settlement can be different. If the third party player loses and they have chips out in play, the house dealer might settle. If the third party doesn't have chips out in play, the third party might hand a rack to the dealer and the dealer will then settle the bets with the winners. One could say that the third party is settling the bet or that the house is settling it.

C. Regulation 2076(c)

This regulation would read, "No more than one *third-party provider of proposition player services* shall be permitted to offer services at a table .... " The phrase "third party provider of proposition player services" is not clear. Is the intent to prohibit two different third party player companies from playing or to prohibit two different employees of the same third party player company to play? If the former is the case, and that seems like the more natural read of this language, the regulation makes no sense. Commission regulations expressly allow more than one third-party player at a table. See 4 Cal. Code Regs. §12270(b)(5) and (g).

D. Regulation 2077

This regulation is intended to provide for expedited review by the Bureau of previously approved games or modifications of previously approved games for determination of compliance with proposed Section 2076. The regulation requires submissions by cardrooms no later than 60 days after the effective date of Section 2076 and for Bureau determinations within 120 days of receipt of the requests. The regulations do not make clear whether games not compliant with Section 2076 could continue to be played during that 180 day period. In order to allow for smooth transition, the effectiveness of Section 2076 should be delayed one year similar to how was done recently by the Commission with modifications to the surveillance regulations.

* * *

The proposed regulation would constitute a radical change in enforcement of the law not triggered by any change in the law. They also contravene the long-standing interpretation of the law by the Department of Justice, which has approved play of these games for over two decades without imposing any of the requirements in the proposed regulations. The regulations also contravene the direction of the voters and the Legislature which over the recent decades has implemented regulations to control gambling and has relaxed prohibitions against

gambling. Considering all that, the only reasonable explanation for the proposed regulations is the unfounded complaints by the cardroom's competitors, the Indian tribes which offer Nevada style-gaming, which make far more money and which seeks to monopolize.

We appreciate your consideration of these comments.

Sincerely,

[redacted]

EXHIBIT
A

JOURNAL

OF

THE NINTH SESSION

OF THE

Senate of the State of California,

BEGUN ON

THE FOURTH DAY OF JANUARY, ONE THOUSAND EIGHT HUNDRED AND FIFTY-EIGHT, AND ENDED ON THE TWENTY-SIXTH DAY OF APRIL, ONE THOUSAND EIGHT HUNDRED AND FIFTY-EIGHT, AT THE CITY OF SACRAMENTO.

Published by Authority.

SACRAMENTO:

JOHN O'MEARA, STATE PRINTER.

1858.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Senate bill No. 323, an act to amend an act to create the county of Sierra and establish the seat of justice therein, to define its boundaries, and provide for the organization, passed April 16, 1852—

On motion of Mr. Phelps, the rules were suspended, bill considered engrossed, read third time, and passed.

The claim of Thomas Cavenaugh was taken up and rejected.

Senate bill No. 278, an act for the relief of Michael Fennell—

The question being on adopting the report of Committee on Claims, recommending rejection of the bill, was lost, and bill considered in Committee of the Whole, and reported back, with amendments.

IN SENATE.

Amendments of committee adopted.

The question being upon ordering the bill engrossed and to be read a third time—

Upon which, the ayes and noes were demanded by Messrs. Anderson, Baker and Dickinson, and taken, with the following result: Ayes, 17—noes, 9:

AYES—Messrs. Allen, Berry, Bell, Carpenter, Ferguson of Sacramento, Grant, Griffith, Hamm, Hart, Holden, Johnson of Sacramento, Johnson of El Dorado, Lewis, Merritt, Soule, Sullivan, and Taliaferro—17.

NOES—Messrs. Anderson, Baker, Burch, Coulter, Dickinson, Garter, Gregory, Rogers, and Thom—9.

So the bill was ordered engrossed, to be read a third time.

The following message was received from the Governor:

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT,
Sacramento, April 20, 1858.

To the Senate of California:

I return, herewith, to your honorable body, without my approval, an act to suppress gaming.

The first section of the act of April 28th, 1857, was in advance of public sentiment; and, therefore, no efforts have been made, to my knowledge, to secure convictions under it. Indeed, although in several states gambling has been declared a felony, I have never heard of any one being convicted of this crime. As a general principle, there should not be any law upon the statute book which public opinion will not allow to be enforced. Such a law might produce a good impression abroad, but it would reflect little credit on us here, where it is notorious that it cannot be executed. More certainty, and less severity, would, in my opinion, be the best policy.

Gambling, in the early history of this state, was the common amusement of a large portion of our people, and it is only within a few years that it has been expelled from the most public places. The vice still exists, to an alarming extent, but it has been driven into secret places, and the moral sense of the community is not so frequently shocked as heretofore. In no one thing, however, has society been improved so much as in this respect, and it is probable that we would suffer but little by a comparison with some of our sister states.

That gambling-houses are still carried on, and that the young and unwary are still being ruined, is a notorious fact. If a correct biography could be written of all who have fallen victims, here, to this vice, since

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the settlement of our state by Americans, a picture would be presented which would reflect no credit upon our race. How many fortunes have been squandered, hearths desolated, families separated, children impoverished, and prisons filled, by these gambling-saloons! Who can estimate the misery which they have inflicted upon society? Who can count the graves which they have filled?

This may be one of the evils which legislation cannot correct, but it is the duty of those who represent the people to do all in their power to suppress it. This cannot be done by passing laws so severe that they cannot be executed, nor by enacting those which inflict so light a penalty that it is not felt.

The act now before me makes the dealer of certain banking games, therein named, guilty of a misdemeanor, and subject to a fine, of not less than five hundred nor more than six hundred dollars. I think it will be difficult to find a penal act, where the maximum and minimum punishments are placed so closely together. By the act which this repeals this offence is a felony, and subjected the party to imprisonment, for not more than five nor less than one year. The old law makes it a misdemeanor to bet on any of these games; the act before me does not. This is making too wide a distinction between men occupying seats on different sides of the same table. The act of 17th April, 1855, (which this also repeals) very properly makes a distinction between the punishment for the first and second offence; this law does not. The existing act goes further than the common law, in declaring certain contracts, etc., in regard to gaming, null and void; this act is silent on the subject. Under the bill before me, if the gambler was only indicted three or four times in the year, the maximum fine is so insignificant that he could pay the penalty, and still carry on a profitable business. This license (for this it is in effect) would amount to some one hundred and fifty or two hundred dollars per month. This is far less than the sum charged for license for gambling-houses, by the act of March 14th, 1851. That law compelled a house keeping over three tables to pay five hundred dollars per month; and houses containing three tables or less, three hundred and thirty-three dollars per month.

There is a provision in this act which, it is said, is an improvement on the present law. It is, that any person convicted under it may be imprisoned until the fine is paid. The Supreme Court of this state has already decided that "when a fine is imposed, on conviction for gaming, the defendant may be imprisoned to enforce its payment," and so there was no necessity for this provision. It is true that this act includes the games of "rondo and keno," but the advantages resulting from this are more than counterbalanced by the objections which I have stated to other provisions. It is better that the disgraceful scenes which are enacted, at the few tables which are still kept up, should be continued, for another year, than that the bill before me, so impotent for good, so pregnant of evil, should become a law.

Entertaining these opinions, the bill is respectfully returned, for reconsideration.

JOHN B. WELLER.

The question, being "Shall the bill pass, notwithstanding the objections of the Governor?" the roll was called, with the following result: Ayes, 6—noes, 15:

AYES—Messrs. Allen, Coulter, Ferguson of Sacramento, Hart, Johnson of Sacramento, and Lewis—6.

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EXHIBIT
B

CALIFORNIA STATE LIBRARY

HISTORY

OF

CALIFORNIA

BY

THEODORE H. HITTELL

VOLUME IV

SAN FRANCISCO
N. J. STONE & COMPANY
1898

LEGISLATIVE INTENT SERVICE (800) 666-1917

next important statutes was a liberal act, which has not been amended much since its passage, concerning divorces. There was considerable controversy upon this subject. The previous legislature had failed to pass a divorce law; and, when the matter came up in the assembly, that body, after a long debate, passed the bill by a vote of only seventeen ayes to sixteen noes. In the senate the bill was referred to a select committee, of which Elcan Heydenfeldt presented a majority report against the bill, pronouncing it unconstitutional and urging that it was inexpedient to legislate upon the subject. It claimed that the constitutional provision that no divorce should be granted by the legislature deprived the legislature not only of granting a divorce but also of granting the power to the courts to decree divorces. It seemed to admit that the courts could grant divorces, as at common law, for causes existing before marriage presenting insuperable obstacles to entering into the marital relation. But it claimed that the marriage contract was a religious sacrament indissoluble except by death, and that it should never be dissolved except by death. On the other hand George B. Tingley submitted a minority report in favor of divorces, showing that the reasoning of the majority was not logical and claiming that there were various cases in which the marital obligation became a distressing burden to the parties and a festering curse to the community.[1]

Heydenfeldt next presented a petition of a number of residents of San José against a divorce law, followed a day or two afterwards by a similar petition from residents of San José Mission, and a third from residents of San Francisco, all of which were referred to the select committee; and Heydenfeldt as its chairman reported in favor of the petitions and recommended that the bill should be rejected. But the senate refused to act on his recommendation. Heydenfeldt appears then, as chairman of the select committee and evidently with a view of strengthening his cause among certain classes of the community, to have invited Rev. O. C. Wheeler, a Baptist preacher, to deliver a sermon against divorces. There is no reason to believe that anything Wheeler could have said would have produced much effect; but

[1] Journals of Legislature, 1851, 89, 100–121, 656–668.

the fact that Heydenfeldt had resorted to such an expedient as inviting a sermon in the name of his committee on a subject pending before the senate provoked much adverse comment and drew down upon him a resolution, adopted by six votes to four, that he had exceeded his powers and in effect censuring him therefor. The bill was then bitterly fought inch by inch, but was finally passed in the senate by a vote of seven ayes to three noes; and on March 26 it received the signature of the governor and became a law. On the next day notice was given in the assembly that a bill would be introduced to repeal the act thus passed; and a week or two afterwards such a bill was presented and passed the assembly by a vote of eighteen ayes to eleven noes; but when it reached the senate, it was indefinitely postponed by a vote of seven ayes to two noes.[1]

Another important statute passed by the legislature of 1851, which has in substance continued in force in California to this day and which has given rise to a long, interesting and important series of decisions by the supreme court, was the homestead act. A bill to exempt a homestead and other property from forced sale in certain cases had been presented in the assembly of 1850; but it had failed to pass and the subject was postponed. The same bill was on January 17, 1851, introduced into the senate, where it was very fully discussed, amended in various particulars and at length, in the form of a substitute bill which had been adopted in the assembly, passed by a vote of nine ayes to four noes. In the assembly the substitute had been passed by a vote of sixteen ayes to ten noes, when Samuel A. Merritt moved to amend its title so as to read "A bill to prevent the collection of debts;" but his motion was indefinitely postponed by a vote of seventeen ayes to nine noes; and on April 22, 1851, the bill was signed by the governor and became a law.[2] Another act, very different in its purview but in one sense intended for the somewhat similar object of providing against improvidence, and equally with the homestead act demanded by a special provision of the constitution, was the act to prohibit lotteries. It was introduced into the senate by David C. Broderick on January 9 and passed

[1] Journals of Legislature, 1851, 131, 349, 404, 960, 1417, 1535, 1580.
[2] Journals of Legislature, 1851, 62, 105, 109, 399, 1495–1498, 1654.

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that body on January 16, 1851. The assembly a few days afterwards made certain amendments, which the senate refused to accept; and there had to be a conference committee and some compromise before an agreement could be reached. The act as passed became a law on March 11, 1851. Though it had to be explained by a new act in 1854 and was afterwards superseded by much broader legislation on the same subject, it served as the beginning of a steady and persistent effort, so far at least as legislative provisions are concerned, to carry out the constitutional provision.[1]

It can not be said, notwithstanding these efforts to prevent lotteries, that the Californian community had advanced far enough to relinquish gambling. This was shown not only by the opposition manifested to the lottery bill, but still more so by a renewed and, as it proved, successful attempt in this legislature to license gaming. A bill to this effect was introduced into the senate by Thomas B. Van Buren on March 4 and passed that body on March 8. The assembly passed it with some amendments a few days afterwards; and it was signed by the governor on March 15, 1851. About two weeks subsequently it was amended in some particulars and continued to be the law until April 17, 1855, when it was repealed by an act to suppress gaming, which in the course of a few years was followed by more and more stringent laws in the same direction.[2] In this connection, it may be added that on March 19, 1851, Elisha O. Crosby presented a memorial of citizens of San José, praying for laws prohibiting gambling altogether as well as various other offenses against public morals; but the legislature paid no attention to it. A much more effective petition was presented from citizens of El Dorado county, praying that horse, mule or ox stealing might be made a capital offense punishable summarily by hanging. In response in part at least thereto, an act was passed on April 22, 1851, making robbery and grand larceny punishable by imprisonment in the state prison "or by death in the discretion of the jury" and petty larceny by imprisonment in the county jail or fine "or

[1] Journals of Legislature, 1851, 44, 61, 69, 101, 282, 310; Hittell's Gen. Laws, 4407.

[2] Journals of Legislature, 1851, 282, 297, 308; Hittell's Gen. Laws, 3322–3338.

by any number of lashes not exceeding fifty upon the bare back or by such fine or imprisonment and lashes in the discretion of the jury"—and so the law remained until 1856.[1]

The most exciting subjects, however, which were considered at the session of the legislature of 1851 were the so-called water-lot act of San Francisco and the removal of the state capital. The first, embracing the grant to the city of San Francisco for ninety-nine years of the lands covered by the tides on the city front, which has already been adverted to and described in speaking of the progress of San Francisco, gave rise to much controversy and some bitter charges. A bill providing for the granting of certain public lands in San Francisco, which had been sold under the so-called Kearny grant of 1846, and quieting the title of claimants thereto was first introduced into the senate on February 1 by Heydenfeldt. The judiciary committee, to whom it was referred, reported a substitute, which was passed by a vote of eleven ayes to two noes on February 5. When the bill reached the assembly, it was referred to a special committee, of which Benjamin F. Moore was chairman; and he on March 10, as such chairman, presented an able report, holding that no title and substantially no equity had been acquired by purchasers under the Kearny grant and that the right to the control and management of the property resided exclusively in the state. He therefore reported another substitute; but the assembly rejected it, at the same time materially amending the senate bill and in many respects making it conform to Moore's substitute. Upon returning to the senate the bill was again amended and passed; but this passage was reconsidered and the bill again amended and passed; and finally on March 26, 1851, it became a law.

About the time of the passage of this act, grave charges of corruption were made and became so frequent that on April 11, Duncan W. Murphy, a member who had voted for the bill, introduced into the assembly a resolution which was adopted, directing an inquiry as to whether any member of the house had been influenced in his action or vote by a promise of reward; and a

[1] Journals of Legislature, 1851, 91, 101, 328; Hittell's Gen. Laws, 1459–1461 and notes.

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EXHIBIT
C

MINORITY RESPONSE

The undersigned member of the Committee on Morals and Police, on the subject of the Bill amendatory of an "Act to Suppress gaming" passed April 17, 1855 submits the following.

He believes that it is the duty of the Legislature to keep pace with public sentiment in the enactment of laws for the better preservation of public morals. In doing this, the Legislature does not assume the office of a moral preceptor but simply reflects the common sentiment of the community and enforces individual observance to it.

He remembers no instance in which a people has been legislated into religion or morality, for all laws rely in a free government, upon the healthy tone of the community for their execution. He is convinced that public feeling is ripe for a vigorous beginning in the task of abolishing from the State the vice of gaming, both in its more open and secret forums but he begs to remind the Senate that the State has heretofore lent itself to the practices of this vice, and has placed the business of keeping tables for games of chance upon an equality with ordinary employments and has knowingly for a long period received large sums into its public treasury for licenses received from this source. These facts taken in connection with the fact that the State has only recently discovered that it can no longer continue to collect licenses from this source, under a recent decision of the Supreme Court, seems to indicate that the sudden absolute prohibition of the practices in forums however retired from public notice is dictated rather by a sense of loss in revenue than by a moral sense against the practice. He therefore believes that the wrong of licensing gaming tables, and the wrongful collection of large revenues from that source, can be best repaired, both in point of morals and justice, by allowing the subject of this encouragement a reasonable time to conform to the provisions of an Act to which this is supplementary.

EJ. Moore

Minority Report.

The undersigned member of the Committee on Morals and Police, on the subject of the Bill amendatory of an Act to suppress gaming passed April 7th 1855, submits the following.

He believes that it is the duty of the Legislature to keep pace with public sentiment in the enactment of laws for the better preservation of public morals. In doing this the Legislature has not assumed the office of a moral preceptor, but simply reflects the common sentiment of the community, and enforces individual obedience to it. No communities are known in which a people has been legislated into religion or morality, for all laws rely in a free government upon the will of the majority of the community for their execution. He is convinced that public feeling is ripe for a vigorous beginning in the task of abolishing from the State the vice of gaming both in its more open and secret forms, but he begs to remind the Senate that the State has heretofore been ~~~~ deaf to the pleadings of this vice, and has placed in the business of keeping tables for gaming a tax equalled with ordinary employments, and has knowingly for a long period received large sums into the public treasury for licenses received from this source. These facts taken in connection with the fact that the State has only recently discovered that it can

no longer continue to collect licenses from this source, under a recent decision of the Supreme Court, seem to indicate that the sudden absolute prohibition of the practice in forms however retirent from public notice is ~~rather a measure of reformation~~ dictated rather by a sense of loss in revenue than by a moral sense against the practise. He therefore believes that the wrong of licensing gaming tables, and the wrongful collection of large revenues from that source, can be best repaired, both in point of morals and justice, by allowing the subjects of this encouragement a reasonable time to conform to the provisions of an Act to which this is supplementary.

[redacted]

8 2

EXHIBIT
D

JAMES P. FOX, DISTRICT ATTORNEY
County of San Mateo, State of California
Hall of Justice and Records
Redwood City, California 94063
By MARK R. FORCUM, Deputy
Telephone: (415) 363-4737
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

ARTICHOKE ENTERPRISES, INC., doing business as ARTICHOKE JOE'S, EL CAMINO, INC., doing business as CASINO ROYALE, Plaintiffs vs. JAMES P. FOX, DISTRICT ATTORNEY FOR THE COUNTY OF SAN MATEO; SAN BRUNO POLICE DEPARTMENT; DOES 1 through 50 inclusive, Defendants.	No. 302073 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiffs are seeking to have a preliminary injunction issue against defendants enjoining them from enforcing Penal Code Section 330 with respect to playing Pai-Gow at the Artichoke Joe's and Casino Royale card rooms in San Bruno.

A preliminary injunction prohibiting the enforcement of a criminal statute is an extraordinary action. Such an injunction is totally inappropriate here, as Plaintiffs can neither show a violation of their constitutional rights nor can they demonstrate any likelihood of success on the merits, as Pai-Gow is an illegal percentage and banking game.

I. THE PROSECUTION SHOULD NOT BE ENJOINED

Few principles in the law are as well established as the rule that a court of equity will not interfere with the anticipated or actual enforcement of criminal statutes. Manchel v. County of Los Angeles (1966) 245 Cal.App.2d 501, 505-507; Pitchess v. Superior Court (1969) 2 Cal.App.3d 644, 649. Indeed, this court has no jurisdiction to grant a preliminary injunction unless the criminal statute involved is unconstitutional on its face, or is being applied in an unconstitutional manner. Civil Code Section 3423; Code of Civil Procedure Section 526; Demott v. Board of Police Commissioners (1981) 122 Cal.App.3d 296, 303; Ebel v. City of Garden Grove (1981) 120 Cal.App.3d 399, 410; Merandette v. City and County of San Francisco (1974) 88 Cal.App. 105, 110.

Moreover, courts have held that trial courts must proceed with great caution in determining whether an injunction should issue in cases involving criminal statutes.

> We regard it as beyond question that trial courts should be extremely cautious and even hesitant and reluctant when asked to enjoin law enforcement officials from enforcing an ordinance obviously approved and adopted by duly elected representatives of the people for the purposes of promoting and protecting public morality prior to a trial on the merits. Pitchess, supra, at 649, citing City of Santa Monica v. Superior Court 231 Cal.App.2d 223, 226.

In this case, Plaintiffs cannot show that Penal Code Section 330 is either unconstitutional or unconstitutionally applied. As a result, the mandates of Code of Civil Procedure Section 526 should be followed.

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II. PLAINTIFFS CANNOT DEMONSTRATE THAT THEIR CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED

Plaintiffs contend that Penal Code Section 330 unconstitutionally restricts their fundamental constitutional right to engage in business. Based on this argument, Plaintiffs then claim they fall within the exception to the general rule prohibiting injunctions against the enforcement of criminal statutes.

Plaintiff's argument however misapprehends the nature of what they must show to demonstrate a constitutional violation. The fact that their business is subjected to a Penal Code regulation does not amount to a per se constitutional violation. Indeed, if that were the case any economic regulation of a business could be deemed to be a constitutional violation. There is, however, no constitutional right to conduct a business in any manner one chooses. Merandette v. City and County of San Francisco (1979) 88 Cal.App.3d 105; Owens v. City of Signal Hill (1984) 154 Cal.App.3d 123. Instead, the proper test to determine if there is a violation of constitutional rights is to determine if the right is fundamental, and whether the state's impingement on the constitutional right is rationally related to a legitimate state interest.

This test was articulated in Owens v. City of Signal Hill, supra. In Owens, plaintiff attempted to enjoin the enforcement of an ordinance against her massage parlor. Plaintiff contended the ordinances violated her constitutional rights. The court upheld a lower court order denying the injunction. In so doing the court held:

> Operation of a massage business is not a fundamental right. Such business is therefore subject to economic regulation which is reviewed under the rational relationship test.
> Owens, supra, at 123.

The court then found that the ordinance was rationally related to a legitimate state interest, discouraging prostitution. Similarly there is no constitutional violation here. Penal Code Section 330 rationally relates to a legitimate state interest, the prohibition of gambling. Accordingly, the regulation of Petitioner's business does not in any way amount to a constitutional violation. Given that fact, it is clear that an injunction is not appropriate here.

III. THE COURT SHOULD NOT ENJOIN A CRIMINAL STATUTE

The law has steadfastly and logically developed to prevent the enjoining of criminal statutes. The law recognizes that the enforcement of criminal statutes is left properly to the discretion of law enforcement officials. This authority and the reasons for it were explained in Manchel v. County of Los Angeles (1966) 245 Cal.App.2d 501, 510-511:

> "The Sheriff is sworn to, and is under a duty to, enforce the criminal laws and in the performance of that duty he is in part protected by law in the exercise of official discretion. It is for the law enforcement officer in the first instance to decide whether plaintiffs are violating any criminal laws. This discretionary power is too vital to the interest of public order to be subjected to restraint by courts. It is a power possessed and exercised as a part of the independent co-ordinate power of the executive branch of the government, and for that reason, if for no other, is not under the circumstances subject to interference by the judicial branch of the government. It is obvious that panguingue can be, and many times is, played differently than as indicated in this case, and when so played it is not a game of skill, but is clearly a game of chance. If the prosecuting agencies, at a later date, find further facts which in the opinions of the officers of such

agencies give an entirely different color to the game, or that the rule of the game be changed ever so little, or that added evidence may be attained which sheds a new light upon the game--are the civil courts to impede the administration of justice by enjoining the law enforcement officials who may threaten to act under a concededly valid ordinance?"

"Pai-Gow", as "panguingue", can be played many different ways. Because a preliminary injunction improperly removes the discretion to evalute these variations and enforce Penal Code Section 330 from Defendants to Plaintiffs, the injunction should not issue.

Plaintiffs' claims with respect to the legality of Pai-Gow must also fail because it is well settled that an injunction will not be granted to protect a person from prosecution on a showing that he is not guilty of the offense or that the law does not apply to him. See Fairchild v. Block (1948) 88 Cal.App.2d 425, 429; Manchel v. County of Los Angeles, supra, at 505, and Pitchess, supra, at 643.

IV. PENAL CODE SECTION 330 IS NOT VOID FOR VAGUENESS

Plaintiffs contend that their constitutional rights are also being violated because Penal Code Section 330 is void for vagueness. In support of this argument, Plaintiffs claim that the term "percentage game" is too vague for men and women of common intelligence to understand. This argument has no merit. A similar argument was raised with respect to the term "game of chance". In In re Hubbard (1964) 62 C.2d 119, 122-123, the court found that the term "game of chance" as used in Penal Code Section 330 was not too vague for individuals of common intelligence to understand. That being the case, it is clear that the term "percentage game" is no more difficult to

comprehend.

V. PLAINTIFFS CANNOT DEMONSTRATE THAT PAI-GOW IS LEGAL AND CANNOT DEMONSTRATE ANY SUBSTANTIAL LIKELIHOOD THAT THEY WILL SUCCEED ON THE MERITS

An injunction should not issue here as there is little likelihood of Plaintiffs succeeding on the merits as Pai-Gow constitutes a prohibited percentage and banking game under Penal Code Section 330.

A. Pai-Gow is an Illegal Percentage Game

The elements of a percentage game are: 1) if the house is taking a fixed percent of a player's winnings; or 2) if the house is collecting only if there is a winner. In either situation the house has an interest in the outcome of the game. This definition is based on People v. Ambrose (1955) 122 Cal.App.2d Supp. 966, where the court stated that:

> Panguingui, as played in defendants' cardroom, was not a banking or percentage game, but one in which each of the players played against all of the others. The fact that the "pot" was manually controlled by the dealer does not affect this conclusion, for the establishment had no interest in the outcome of the game; the defendants did not set up a bank against which all of the participants played, nor did they take a fixed percentage of the winnings. (Emphasis added)

See also Hughes Properties, Inc. v. State (Nov. 1984) 680 P.2d 970, 971, where percentage games were described as games where patrons wager against each other and the house takes a percentage of each wager as a "take-off". (Emphasis added)

Plaintiffs' intentions are to play Pai-Gow in the same manner as the Sullivan Supper Club in San Mateo. As such they claim they will charge a "rental fee" which may be based upon each participant's winnings, or the amount of each participant's bet, or the time that each participant plays.

Plaintiffs' would have the court believe that the house is not involved, has no financial interest in the outcome of Pai-Gow and receives only a "rental fee". Not only is this illogical, but it is contradicted by the facts. The Declaration of Donald Moore (attached hereto as Exhibit A) makes clear that the house at Sullivan's Supper Club does more than collect a flat "rental fee." Instead the house collects 5% of winnings, collects 5% of all money left after winnings are paid, and encourages individuals who tie with the Bank to remain at the table and play again by not collecting a percentage of their wagers. All this shows that the house has a significant financial incentive to encourage large bets and that the house collects a percentage based on winnings. Obviously this method of collection constitutes a percentage rake-off and it is legal sophistry to label it a "rental charge" to avoid Penal Code Section 330.

Importantly, Plaintiffs' own expert, I. Nelson Rose, ignores the fact that Plaintiffs intend to pay a flat percentage fee to winners. (See Rose Declaration at 9) This is not surprising as Rose himself has previously stated that collection of flat percentages from participants' winnings constitute a prohibited percentage game. (See Exhibit B).

In a February 13, 1985, paper entitled "Pai-Gow -- Expert Opinion Report", Rose states:

> "In California Pai-Gow is neither a banking or percentage game. The house cannot enter into play at all; the deal rotates to each player in turn and the other players are limited to what the dealer-player is willing to put up as his stake. The house does not collect a flat percentage of winning bets." (Emphasis added)

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Thus, Plaintiffs' own expert agrees that where as here, a flat percentage of winning bets are collected, a percentage game exists. As Pai-Gow clearly constitutes an illegal percentage game, the injunction should be denied.

B. PAI-GOW CONSTITUTES AN ILLEGAL BANKING GAME

A banking game was defined in People v. Carrol, (1889) 80 Cal. 153, 22 P. 129, as

> A game conducted by one or more persons where there is a fund against which everybody has a right to bet, the bank being responsible for the payment of all the funds, taking all that is won, and paying out all that is lost. The fund which is provided for that purpose is generally called the bank, and the person who conducts it the banker.

See also People v. Ambrose, (1955) 122 Cal.App.2d Supp. 966. In a banking game, the banker or exhibitor pays all the winnings and suffers all the losses, he is the one against the many, which is the supreme test of a banking game. Bell v. States, (1893) 22 S.W. 687; Faucett v. State, 79 S.W. 548; In Re Lowrie, (1919) 43 Cal.App. 564, 566.

It makes no difference whether the house or an individual acts as the bank, as Penal Code Section 330 by its terms includes all persons who carry on or conduct the game. People v. Sam Lung, (1886) 70 Cal. 515. Similarly, it is irrelevant whether the banker takes the other participants on consecutively or in a body. Bell v. States, (1893) 22 S.W. 687.

The Declaration of Donald Moore, attached hereto as Exhibit A, makes clear that Pai-Gow is in fact an illegal banking game. One participant (the banker) puts up a fund of money against which all the other players have a right to bet against. The players do not bet against each other, but bet only against the

single banker. All losses are paid from this bank and all wins by the bank are retained by the bank. He is the "one against the many." Plaintiffs attempt to avoid this obvious fact by resorting to further sophistry. They rename the bank as a "designated player." Without belaboring the point, they are trying to circumvent established law by changing names.

VI. CONCLUSION

Plaintiffs cannot and do not show that their constitutional rights are being violated. As Pai-Gow clearly violates Penal Code Section 330's prohibitions against banking and percentage games, plaintiffs cannot show any reasonable likelihood that they will succeed on the merits. Plaintiff's motion for a preliminary injunction should therefore be denied.

DATED: November 20, 1985

Respectfully submitted,

JAMES P. FOX, District Attorney

By [redacted]
MA

MRF:jem

DECLARATION OF DONALD JAMES MOORE

1. Your declarant is Donald James Moore. I am currently employed as investigator for the San Jose Police Department Vice Unit. I have worked as a police officer for fourteen years.

2. I have extensive experience in gambling and cardroom investigations. I have investigated 10 to 15 gambling cases in San Jose. In one case I worked eight and one-half months in an undercover capacity in a cardroom. I have taught a course in cardroom investigation at the California Department of Justice and San Jose State University. I have also been employed as a consultant in gambling investigations by the Emeryville and Salinas Police Departments. I specifically spent approximately forty hours in Emeryville, California, observing how Pai Gow is played. Finally, I have testified approximately five times in courts in Santa Clara County regarding gambling and cardroom investigations.

3. On October 9, 1985, I went to the Sullivan's Supper Club and Casino in San Mateo and played Pai Gow. The game, as played at Sullivan's Supper Club, starts with the dealer who is employed by the house. The dealer and eight players sit at the Pai Gow table. The dealer is responsible for exchanging cash money into chips and shuffling and dealing the tiles. The Bank, which is the person who puts up a sum of money from which the other seven players can bet against, is signified by the marker marked "DEALER". The bank is determined in each hand by any one of eight players who accepts the marker marked "DEALER" from the

EXHIBIT A

house dealer. Once the BANK MARKER is accepted, this player puts up any amount of money he wants to. The house dealer then shuffles the tiles which are face down on the table while the seven players are placing their bets on the table in front of them. It should be noted that on-lookers are also allowed to place bets next to the player they favor in any single hand of Pai Gow. Upon completing his shuffle, the house dealer stacks the tiles in piles of four high, totaling eight stacks. The line of stacked tiles are then moved toward the BANK, and he has the option of shuffling the tiles by moving the stacks or part of the stacks from one side to the other or by moving certain tiles and placing them on top of other stacks. Once he has completed this, the Bank picks up the three dice, which are usually in some sort of container, and shakes them. Once the dice have been shaken, the betting ceases at the table which is controlled by the house dealer. The house dealer then removes the lid or cover from the device holding the dice and counts the total dice. This determines the lead player, who will receive the first stack of four tiles from the point where the bank cuts the line of stacked tiles. The count of the dice moves counter-clockwise from the bank until the total number of dice has been used. When the lead player has been determined, the house places a marker in front of that player. The house dealer then takes one stack of four tiles and places that in front of the lead player. The house dealer then rotates counter-clockwise from the lead player, giving each player a stack of four tiles. Each stack of tiles is taken from the line of tiles in reverse order.

Once each player has received his set of four tiles, he may look at the tiles and arrange them in the order that he thinks will beat the BANK's set of tiles. The object of the game is to set the tiles into two pairs for the best "ranking" combinations. The BANK also attempts to attain the best ranking combination with the two pairs of tiles that he has. The BANK then turns his tiles over, keeping the two pairs separate from low pair to high pair.

Once the BANK turns his pairs up for all of the other players to see, no other player playing against the BANK may change the combination he has chosen to use to play against the BANK. The house dealer then turns up each player's pairs in a counter-clockwise position from the lead player which is indicated by the marker. As each player's pairs are turned up, the house dealer indicates if there is a win, loss or push by that player against the BANK. Once all of the player's pairs are shown and all winner, losers or pushes have been determined, the house dealer gathers all wins by the BANK into the middle of the playing table and away from all other money or chips. The house dealer then begins to pay the players who have beat the BANK, starting with the lead player. Each winning player is paid from the BANK's winning pot until all winners are paid or the BANK runs out of money. As the house dealer pays the winners, he collects five percent (5%) of the win prior to handing the winner his chips or money. If, after all winners have been paid, there is money left in the BANK's winning pot, the house dealer collects five percent (5%) of the total amount of the BANK's win.

To start the next game, the house dealer moves the BANK marker to the next player directly to the previous banker's right. Each player keeps the bank for two games, at which time the BANK is rotated counter-clockwise.

4. Based on my training and experience, it is my expert opinion that Pai Gow as played at Sullivan's Supper Club violates Penal Code section 330, as it constitues a percentage and banking game.

5. It is my opinion that Pai Gow as played at the Sullivan Supper Club constitutes a percentage game as:

a) The house takes five percent (5%) of each winner's winning when that player has successfully attained two ranking pairs higher than those of the BANK's.
b) Winners are paid off, one at a time, by the house dealer who, prior to paying the player from the bank, takes the house's five percent (5%) from the bank's pot.
c) The house takes five percent (5%) from the BANKER, after all of his opponents have either been paid for a win, have lost their wager to the bank, or the BANK and the player have pushed (tied), and the BANK's winnings are greater than the pay-offs (losses).
d) The house entices players who PUSH (tie) with the bank to remain at the Pai Gow table and play the next set by not taking a percentage of their wagers.
e) The house does not collect on the basis of time each player spends at the Pai Gow table. The house also does not collect an ante (a fee collected prior to the commencing of the game).

6. It is my expert opinion that Pai Gow as played at the Sullivan Supper Club constitutes a banking game as:

a) The house designates the banker by placing a marker with the letters DEALER in front of the player accepting the marker and who then plays against the other seven players.
b) The BANK the assumes the responsibility of paying all winners and accepting any losses of the other players.
c) The players play against the BANK (banker-dealer),

not against each other.
d) The bank exercises a greater advantage over the other players as his odds of winning are greater than any one opponent. He is playing against seven individual players, not just one.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at SAN JOSE CALIF on 11.9.85, 1985.

[redacted]

EXHIBIT
E

Gambling on Tribal Lands. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

GAMBLING ON TRIBAL LANDS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Modifies state Constitution's prohibition against casinos and lotteries, to authorize Governor to negotiate compacts, subject to legislative ratification, for the operation of slot machines, lottery games, and banking and percentage card games by federally recognized Indian tribes on Indian lands in California, in accordance with federal law.
- Authorizes slot machines, lottery games, and banking and percentage card games to be conducted and operated on tribal lands subject to the compacts.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Uncertain fiscal effect on state and local tax revenues ranging from minor impact to significant annual increases.
- State license fees of tens of millions of dollars each year available for gambling-related costs and other programs.

Final Votes Cast by the Legislature on SCA 11 (Proposition 1A)

Assembly:	Ayes 75	Senate:	Ayes 35
	Noes 4		Noes 0

Analysis by the Legislative Analyst

Background

Gambling in California

The State Constitution and various other state laws limit the types of legal gambling that can occur in California. The State Constitution specifically:

- Authorizes the California State Lottery, but prohibits any other lottery.
- Allows horse racing and wagering on the result of races.
- Allows bingo for charitable purposes (regulated by cities and counties).
- Prohibits Nevada- and New Jersey-type casinos.

Other state laws specifically prohibit the operation of slot machines and other gambling devices (such as roulette). With regard to *card* games, state law prohibits: (1) several specific card games (such as twenty-one), (2) "banked" games (where the house has a stake in the outcome of the game), and (3) "percentage" games (where the house collects a given share of the amount wagered).

State law allows card rooms, which can operate any card game not otherwise prohibited. Typically, card room players pay a fee on a per hand or per hour basis to play the games.

Gambling on Indian Land

Gambling on Indian lands is regulated by the 1988 federal Indian Gaming Regulatory Act (IGRA). The IGRA defines gambling under three classes:

- ***Class I*** gambling includes social games and traditional/ceremonial games. An Indian tribe can offer Class I games without restriction.
- ***Class II*** gambling includes bingo and certain card games. Class II gambling, however, specifically *excludes* all banked card games. An Indian tribe can offer only the Class II games that are permitted elsewhere in the state.
- ***Class III*** gambling includes all other forms of gambling such as banked card games (including twenty-one and baccarat), virtually all video or electronic games, slot machines, parimutuel horse race wagering, most forms of lotteries, and craps.

An Indian tribe can operate Class III games only if the tribe and the state have agreed to a tribal-state compact that allows such games. The compact can also include items such as regulatory responsibilities, facility operation guidelines, and licensing requirements. After the state and tribe have reached agreement, the federal government must approve the compact before it is valid.

Gambling on Indian Lands in California

According to the federal Bureau of Indian Affairs, there are over 100 Indian rancherias/reservations in California. Currently, there are about 40 Indian gambling operations in California, which offer a variety of gambling activities.

In the past two years there have been several important developments with regard to Indian gambling in California:

- ***April 1998.*** The Governor concluded negotiations with the Pala Band of Mission Indians to permit a specific type of Class III gambling on tribal land. The compact resulting from these negotiations—the "Pala" Compact—was subsequently signed by 10 other tribes. These 11 compacts were approved in legislation in August 1998.

May 22, 2025

California Department of Justice
Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

E-mail: A. McMillen, Regs Coord. At BGC_Regulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games;
Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

Dear Director Yolanda Morrow and Ms. Andreia McMillen:

We, at Bay 101 Cardroom employ 542 employees and contribute twelve million ($12,000,000) in tax es to our local communities. We are writing to express our serious concerns regarding the recently proposed draft regulations on April 11, 2025, focused on blackjack-style games and the rotation of the player-dealer position.

We align with the objections raised by Munger, Tolles & Olson LLP on behalf of the California Gaming Association, Communities for California Cardrooms, and the California Cardroom Alliance, emphasizing that the drafted regulations lack legal support and exceed the Bureau's statutory authority under the Gambling Control Act. These changes, unsupported by statute or case law, would have a detrimental impact on the cardroom industry, jeopardizing jobs and the local economies that benefit from our operations.

Moreover, the focus of the Bureau should be directed towards curbing the proliferation of unlicensed gambling locations that operate outside the legal framework, rather than imposing unsupported punitive regulations on compliant cardrooms. The discrepancy between the lack of enforcement against illegal activities and the effort spent on these draft regulations is concerning and suggests a misalignment with the Bureau's mandate to ensure legal gaming practices.

Our cardroom not only provides significant tax revenues but also supports local public services critical to our community, including police, fire protection, parks and other critical resident services. The proposed changes harm our communities, jobs, and quality of life.

In addition to these unsupported drafted regulations, my business and every other cardroom in the state are spending time and resources preparing to defend against litigation filed by seven of the largest and wealthiest tribal casinos due to the passage of Senate Bill 549.

We ask the Bureau to reconsider the proposed drafted regulations, refocus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy. We appreciate your consideration.

Sincerely

General Counsel
BAY 101 CARDROOM

CLUB ONE CASINO

SINCE 1995

Via email to BGC_Regulations@doj.ca.gov

March 29, 2025

Director Yolanda Morrow
Andreia McMillen, Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

Re: Proposed Regulations Concerning Player-Dealer and Blackjack-Style Games

Dear Director Morrow and Ms. McMillen:

Thank you for allowing us to comment on behalf of Club One Casino and the California Gaming Association in opposition to the proposed regulations concerning player-dealer and blackjack-style games. Further, we endorse the positions put forth by Munger Tolles and Olson LLP on behalf of the CGA in letters submitted to you earlier today.

As I mentioned in my stated comments at the respective hearings, we believe the proposed regulations overstep the Bureau's authority and undermine that of the Commission, are inconsistent with statute, previous Bureau-approvals and established California law, fail to conform with the Administrative Procedures Act and by the AG's own economic analysis, benefit wealthy tribes to the devastating economic and social harm of California workers and communities.

Beyond the legal, procedural and economic shortcomings of the proposed regulations, we were disappointed that Bureau failed to provide transparency and accessibility protections for those most vulnerable (cardrooms, employees and cardroom-supported communities) to the proposed regulations. We were given limited time to speak on a complex topic with no clear need for the restriction, we were not afforded the opportunity to see who from the Bureau was participating or the extent of public support or opposition, we were not allowed to organize the speaker list to maximize public feedback and no translation services were offered to non-English speakers.

Candidly, it appears the Bureau's proposed regulations are designed to eliminate cardrooms to the benefit of influential tribes with no regard for the certain economic

destruction to California families and communities and no benefit to public safety. The entire effort seems contrived—proposing to outlaw modern day Coca-Cola based on an 1886 recipe because Pepsi doesn't like competition—and kowtowing to heavy-handed foreign governments immune from political, legal or economic consequence.

We respectfully urge you to withdraw the proposed regulations from consideration.

Sincerely,

Kyle R. Kirkland
President

3050 N CEDAR AVENUE #101 FRESNO CA 93726 559 197 3000

THE COMMERCE
CASINO & HOTEL

May 29, 2025

Director Yolanda Morrow
Andreia McMillen, Regulations Coordinator
CA Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

Via E-mail: BGC_Regulations@doj.ca.gov

Re: California Gaming Association Comments on Proposed Regulations Concerning Blackjack-Style Games

Dear Director Morrow and Ms. McMillen:

Please accept this letter as Commerce Casino & Hotel's strong opposition to the Bureau's proposed regulations on Blackjack style games. We agree with and join in the statements and legal authority set forth in and incorporate by reference the letter submitted by Munger, Tolles & Olson LLP on behalf of multiple cardroom industry associations.

The Bureau has approved various Blackjack games for decades, carefully evaluating and confirming each game's compliance with all applicable laws in the process, and granting approval of the games only after the Bureau satisfied itself that the game was fully compliant with all applicable laws. These game reviews and approvals have been overseen by multiple Attorneys General, all who have agreed that the currently approved games are legal and appropriate for play in California Cardrooms. However, the Bureau now seeks to make drastic changes to all manner of approved Blackjack games, contradicting and disregarding decades of regulatory approvals, and ignore the clear legislative intent of the Gambling Control Act (the "Act").

Initially, the current proposal does not comply with Government Code Section 11346.2, subdivision (b) (4) which requires, in part, a "... description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives." Notwithstanding industry efforts to discuss and present reasonable alternatives over the past several years, not one

alternative appears to have been considered, and no reasons were given for rejecting the alternatives. For that reason alone, the proposal must be withdrawn.

In addition, the proposal is based on a false premise that Penal Code 330 includes the modern-day version of Blackjack. The Penal Code was amended in 1885 to prohibit the game of "twenty-one." However, the current proposal does not define or prohibit the version of twenty-one as it was played in 1885 and is prohibited by the Penal Code. Rather, the proposal only seeks to prohibit the modern game of "blackjack," played according to Bureau approved rules. The approved games are markedly different, and many have been determined to be distinct variants by the United States Patent Office. There is simply no legal basis for prohibiting the currently approved games and any effort to relate them to the prohibited version of twenty-one fails at every level. To do so, the Bureau would have to adopt an interpretation of the statute, the history and the decisional law; an act the Bureau lacks the authority undertake. Further, the proposed regulation would effectively result in a unilateral revocation of the current approvals for almost all Blackjack games and would serve to place a statewide ban on modern-day blackjack. The Bureau lacks any authority to take such actions.

For these reasons and those articulated in the letter submitted by Munger, Tolles & Olson LLP, the Bureau should withdraw the current proposed regulations.

Very truly yours,

[redacted]

Joy Fernbach Harn
General Counsel

THE COMMERCE
CASINO & HOTEL

May 29, 2025

Director Yolanda Morrow
Andreia McMillen, Regulations Coordinator
CA Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

Via E-mail: BGC_Regulations@doj.ca.gov

Re: California Gaming Association Comments on Proposed Regulations Concerning Player Dealer Rotation

Dear Director Morrow and Ms. McMillen:

Please accept this letter as Commerce Casino & Hotel's strong opposition to the Bureau's proposed regulations on Blackjack style games. We agree with and join in the statements and legal authority set forth in and incorporate by reference the letter submitted by Munger, Tolles & Olson LLP on behalf of multiple cardroom industry associations.

The Bureau has approved numerous games that involve a player-dealer position for decades, carefully evaluating and confirming each game's compliance with all applicable laws in the process, and granting approval of the games only after the Bureau satisfied itself that the games were fully compliant with all applicable laws. These game reviews and approvals have been overseen by multiple Attorneys General, all who have agreed that the currently approved games are legal and appropriate for play in California Cardrooms. However, the Bureau now seeks to make drastic changes to all approved games that involve a player-dealer position, contradicting and disregarding decades of regulatory approvals, and ignoring the clear legislative intent of the Gambling Control Act (the "Act").

Initially, the current proposal does not comply with Government Code Section 11346.2, subdivision (b) (4) which requires, in part, a "... description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives." Notwithstanding the industry's efforts to discuss and present reasonable alternatives over the past several years, not

one alternative appears to have been considered, and no reasons were given for rejecting the alternatives. For that reason alone, the proposal must be withdrawn.

Each game approval for the past several decades has survived the Bureau's scrutiny and was found to be legal. For well over a decade, the Bureau has engaged with the cardroom industry and has received volumes of information and legal arguments that clearly support the legality of our games. However, the Bureau and the various Attorneys General who have overseen the Bureau and its game approvals, have failed to provide any written legal response to contradict the information and legal positions provided. Without a clear statement of why the proposed regulations are necessary, an explanation as to other reasonable alternatives it considered and why those alternatives were rejected, the current process cannot move forward.

For these reasons and those articulated in the letter submitted by Munger, Tolles & Olson LLP, the Bureau should withdraw the current proposed regulations.

Very Truly Yours,

[redacted]

Joy Fernbach Harn
General Counsel

May 28, 2025

A. McMillen
Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
2450 Del Paso Road, Suite 100
Sacramento, CA 95834
Email: BGC_Regulations@doj.ca.gov

RE: Concerns Regarding Procedural Fairness of Public Hearing on Proposed Regulations (Title 11, CCR, Sections 2070–2071)

Dear Ms. McMillen:

On behalf of Communities for California Cardrooms (CCC), we write to express serious concern about the manner in which the Department of Justice conducted its public hearing on the proposed player-dealer rotation regulations earlier today.

While we appreciate the Department's attempt to solicit public input, the procedural limitations of the hearing undermined its effectiveness, fairness, and compliance with the Administrative Procedure Act (APA), Government Code § 11346.8.

I. Lack of In-Person Access

The hearing was held exclusively via Zoom webinar format, offering no opportunity for in-person participation. This disenfranchised stakeholders without reliable internet or computer access, or those unfamiliar with virtual platforms, especially many frontline workers in our cardrooms. In-person options are essential for ensuring broad and equitable access to the rulemaking process.

II. No Interpretation Services

The Bureau did not provide interpretation for non-English-speaking participants. A significant portion of California's cardroom workforce is composed of individuals for whom English is not their first language. The absence of translation services effectively excluded their voices from the proceeding.

III. Absence of Video or Visual Accessibility

The Bureau's decision to limit the hearing to audio-only access—without video or visual aids—further hindered transparency. Stakeholders were unable to see who was speaking or gauge engagement with their comments, weakening the accountability and inclusiveness of the process. Further, there was no way for the public to determine if the regulators were actively engaged in listening to the live comments.

IV. Two-Minute Time Limit on Oral Comments

Most concerning was the imposition of a strict two-minute time limit for individual speakers on a highly technical and far-reaching regulatory proposal. The draft regulations are complex and impact numerous stakeholders across operational, legal, and economic dimensions. Two minutes is insufficient to meaningfully articulate concerns or propose alternatives. There was more than sufficient time to allow speakers to complete their statements as the hearing was concluded before noon. Therefore, there was no basis for such a short limitation on comments.

V. APA Compliance and Legal Authority

Government Code § 11346.8 mandates that "[t]he agency shall provide a meaningful opportunity for all interested persons to present statements, arguments, or contentions, orally or in writing, with respect to the proposed action." The conduct of today's hearing failed to satisfy that obligation. Specifically:

- Gov. Code § 11346.4(a)(5) requires that rulemaking notices include instructions for public participation that do not unreasonably restrict engagement.
- Gov. Code § 11340.85 emphasizes that agencies must "ensure that the public has a reasonable opportunity to be heard and to offer comment," particularly in proceedings involving complex or controversial regulatory changes.
- Gov. Code § 7296.2 (Dymally-Alatorre Bilingual Services Act) mandates that state agencies offering public services must provide language assistance when substantial non-English-speaking populations are served—particularly relevant for California's diverse cardroom workforce.
- Additionally, case law has recognized that the purpose of a public hearing is not merely procedural but substantive, allowing regulators to assess the scale and depth of support or opposition (Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215, 1236).

By limiting oral comments to two minutes, providing no in-person option, and failing to accommodate non-English speakers, the Bureau has effectively excluded critical community voices and created a record that does not reflect the full scope of stakeholder input. These limitations run contrary to both the letter and spirit of California's rulemaking laws.

We respectfully urge the Bureau to:

1. Hold an additional hybrid hearing with in-person and remote options;
2. Provide interpretation services;
3. Allow for extended comment periods for complex topics; and
4. Make a full recording or transcript of today's hearing publicly available.

We appreciate the opportunity to share our concerns and hope the Department will take meaningful steps to ensure future proceedings are accessible, inclusive, and procedurally sound.

Sincerely,

Clarke Rosa
President
Communities for California Cardrooms (CCC)
calcardrooms.org

To: BGC_Regulations
Subject: Proposed Regulations: Player-Dealer & Blackjack-Style Games
Date: Thursday, May 29, 2025

To Whom it May Concern,

My name is Michael Ibach, and I am the Associate General Counsel at Hawaiian Gardens Casino. While I voiced my strong opposition to the proposed regulations during the public hearings, I wanted to again emphasize my opposition.

California Cardrooms have tirelessly worked to comply with the Bureau's regulations. We have been told that our games are compliant by attorney general after attorney general. Now, after years of compliance, the Bureau is deciding to unlawfully change the rules of games that they have approved repeatedly over decades. The proposed rule changes, as outlined (but understated) in the SRIA, would likely have fatal consequences to California Cardrooms. They would force cardrooms to close, eliminate jobs, and even disband cities such as Hawaiian Gardens.

The proposed regulations contradict previous actions, statements, and positions that the attorney general's office and the Bureau have taken. Perhaps most shockingly, the proposed regulations come at a time when many of the issues are being litigated in the Sacramento Superior Court. There is no logical reason for the Bureau to take the proposed actions now. The games have clearly been approved for years, and there are no legitimate complaints related to the games. There is no need for any sort of urgent action. There is no logical reason that the Bureau would implement proposed regulations when the present 549 litigation will, undoubtedly, impact the regulations.

Instead of allowing due process to play out, the Bureau is attempting to prematurely implement regulations, which would force cardrooms to expend significant resources. The Bureau would have cardrooms expend significant resources in order to comply with new regulations, yet a ruling in the 549 litigation could render the proposed regulations moot. The most pressing question is why? Why does the Bureau, after years of telling cardrooms their games were legal, feel like it NEEDS to push these rulings through now?

The answer to the question, while disappointing, is clear. The Attorney General is attempting to appease the wealthy tribes. The SRIA report highlights the beneficiaries of the proposed regulations…the tribes. So, despite contradicting his predecessors, his agency, and longstanding law, Attorney General Bonta is forcing these regulations through. Despite the potential risks to the California economy, local economies, jobs, and citizens, Attorney General Bonta is forcing these regulations through. These regulations, and the timing of the same, are illogical. They serve in proving that the Attorney General's concerns do not lie with his constituents, but, rather, they lie with the wealthy and powerful tribes that control him.

A prudent course of action would be to wait for the 549 litigation to provide the Attorney General with guidance. A prudent course of action would be to make certain that the changes are supported by judicial interpretation before risking the economic and physical well being of California citizens. A prudent course of action would be to defer to the decades of interpretation and approval that the Bureau has provided. Unfortunately, in attempting to prematurely promulgate these propose regulations, the Attorney General is conclusively stating that he does not care for the citizens of California, and he certainly does not care for the prudent course of action.

I beg you to withdraw these proposed regulations, and let the legal system play out. Thank you.

Michael W. Ibach, Esq.
Associate General Counsel

the Gardens CASINO
www.thegardenscasino.com

HOLLYWOOD PARK CASINO

April 29, 2025

California Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
E-mail: BGC_Regulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games;
Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

Dear Director Yolanda Morrow and Ms. Andreia McMillen:

We, at Hollywood Park Casino**,** employ 608 employees and contribute approximately $5.12M in taxes annually to our local communities. We are writing to express our serious concerns regarding the recently proposed draft regulations on April 11, 2025, focused on blackjack-style games and the rotation of the player-dealer position.

We align with the objections raised by Munger, Tolles & Olson LLP on behalf of the California Gaming Association, Communities for California Cardrooms, and the California Cardroom Alliance, emphasizing that the draft regulations lack legal support and exceed the Bureau's statutory authority under the Gambling Control Act. These changes, unsupported by statute or case law, would have a detrimental impact on the cardroom industry, jeopardizing jobs and the local economies that benefit from our operations.

Moreover, the focus of the Bureau should be directed towards curbing the proliferation of unlicensed gambling locations that operate outside the legal framework, rather than imposing unsupported punitive regulations on compliant cardrooms. The discrepancy between the lack of enforcement against illegal activities and the effort spent on these draft regulations is concerning and suggests a misalignment with the Bureau's mandate to ensure legal gaming practices.

Our cardroom not only provides significant tax revenues but also supports local public services critical to our community, including police, fire protection, parks and other critical resident services. The proposed changes harm our communities, jobs, and quality of life.

In addition to these unsupported draft regulations, my business and every other cardroom in the state are spending time and resources preparing to defend against litigation filed by seven of the largest and wealthiest tribal casinos due to the passage of Senate Bill 549.

We ask the Bureau to reconsider the proposed draft regulations, focus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy.

We appreciate your consideration.

Sincerely,

General Manager
Hollywood Park Casino

Munger, Tolles & Olson LLP

May 29, 2025

VIA E-MAIL AND DOJ FILE EXCHANGE

Director Yolanda Morrow
Andreia McMillen, Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834
BGC_Regulations@doj.ca.gov

Re: *California Gaming Association Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position*

Dear Director Morrow and Ms. McMillen:

Our firm represents the California Gaming Association ("CGA"), an industry trade group whose members comprise the majority of licensed gambling enterprises in California. The CGA's members provide tens of thousands of living wage jobs to working Californians and hundreds of millions of dollars of tax revenue to host communities and the State. Communities for California Cardrooms ("CCC") and the California Cardroom Alliance ("CCA") also join in these comments. The CCC is a nonprofit organization that provides a united voice for small businesses; advances and protects local jobs and the economy that is provided by cardrooms; and educates the public on the benefits and history of cardrooms in their communities. The CCA

is a nonprofit organization that represents cardrooms from around the state while partnering with local communities.[1]

On behalf of the CGA, CCC, and CCA, we write to provide comments on the proposed regulations issued by the Bureau of Gambling Control ("Bureau") concerning rotation of the player-dealer position ("Proposal"). The Bureau should not move forward with its Proposal. This regulatory effort is legally improper because it usurps the regulatory role vested by statute in the California Gambling Control Commission, and it is premature in any event because the judiciary may soon provide guidance on critical legal questions underpinning the Proposal. (See *post*, Part I.) Adopting the Proposal now thus risks inconsistent rules from the Bureau and the judiciary, creating uncertainty and chaos for the industry and local governments. The Proposal errs further by addressing the critical legal questions incorrectly based on misapprehension of the governing law and misunderstanding of the rules of the games at issue. The law prohibits games in which a single, designated participant takes on all comers, pays all winners, and collects from all losers; the games at issue do not have that quality. (See *post*, Part II.) The Proposal also lacks the necessity, clarity, and consistency required for adoption under the Administrative Procedure Act ("APA"); (see Gov. Code, § 11349.1), including because the Proposal subverts, rather than advances, the Bureau's stated goal of preventing "banking." (See *post*, Parts III-IV.) Many elements of the Proposal are neither necessary nor supported by the authority cited by the Bureau. Finally, the Proposal is based on an incorrect and vastly understated assessment of the effects of the Proposal on cardrooms, third-party providers of proposition player services ("TPPPPS"), California workers, and local communities. (See *post*, Part V.) We urge the Bureau not to move forward with its Proposal.

[1] A list of individual cardrooms and third-party providers of proposition-player services that join this comment follows after the signature page.

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EXHIBITS

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Exhibit B: Exemplar Game Rules

Exhibit C: Bureau Letter of Dec. 20, 2007

Exhibit D: Bureau Notifications of February 19, 2016, and June 30, 2016

I. The Proposed Regulations Are Improper and Premature

A. The Bureau Lacks Authority to Issue the Proposed Regulations

The Bureau is not authorized to adopt a regulation that categorically prohibits a certain type of game, or to revoke permits for games that the Bureau has already approved. The Bureau, "like all administrative agencies, has no inherent powers; it possesses only those powers that have been granted to it by the Constitution or by statute." (*Security Nat. Guaranty, Inc. v. Cal. Coastal Com.* (2008) 159 Cal.App.4th 402, 419.)[2] Accordingly, if the Bureau "takes action that is inconsistent with, or that simply is not authorized by [statute], then its action is void." (*Ibid.*)

The Gambling Control Act (Business and Professions Code section 19800 *et seq.*) ("GCA") entrusts the Commission and Bureau with separate and distinct duties. The Commission is responsible for establishing minimum regulatory standards for the gaming industry, and adjudicating claims of unlawful gambling activity. (Bus. & Prof. Code, §§ 19824, 19840, 19841.) By contrast, the GCA assigns the Bureau an investigative and prosecutorial role. (See *id.* § 19826.) Specifically, the Bureau's statutory duties are limited to *vetting* applicants for gaming licenses (*id.*, subd. (a)), *monitoring* the conduct of active licensees (*id.*, subd. (b)), *investigating* suspected illegal gaming activity (*id.*, subds. (c)-(d)), *initiating* disciplinary actions before the Commission (*id.*, subd. (e)), and *approving* individual applications for the play of a specific controlled game (*id.*, subd. (g)). Unlike the Commission, which has general authority to "adopt regulations for the administration and enforcement of [the GCA]," (*id.* § 19840), the Bureau is authorized only "[t]o adopt regulations reasonably related to *its* functions and duties as specified in [the GCA]" (*id.* § 19826, subd. (f), italics added).

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[2] (See also *Louisiana Pub. Service Com. v. FCC* (1986) 476 U.S. 355, 374 ["[A]n agency literally has no power to act ... unless and until [the Legislature] confers power upon it."]; *BMW of North America, Inc. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 995 ["It is fundamental that an administrative agency has only such power as has been conferred upon it by the constitution or by statute and an act in excess of the power conferred upon the agency is void."]; *B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 955–956 ["[A]n attempt by an administrative agency to enlarge the scope of the powers conferred upon it is unlawful and void."].)

(1) The Bureau Lacks Authority to Prohibit or Restrict Games on a Statewide Basis

The GCA does not authorize the Bureau to prohibit games featuring a player-dealer position that do not meet specific criteria defined by the Bureau. The Bureau is charged with reviewing and approving individual game applications. But only the *Commission* is empowered to promulgate regulations restricting the scope of lawful gaming activity in the state. (See Bus. & Prof. Code, § 19841, subds. (o)–(p).) And even "[t]he commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, unless the commission, in [a full adjudicatory proceeding], finds that the game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance." (*Id.* § 19842, subd. (a).) This provision ensures that "statewide" restrictions on gaming activity—the type of restrictions included in this Proposal—are evaluated by a five-member panel that has been duly appointed by the Governor for this purpose, after receiving legal arguments, evidence, and testimony from affected parties and the public. (See *id.* § 19811.) Further confirming the Bureau's limited role, the GCA provides that the Bureau may "recommend[]" limitations on games and gaming operations to the Commission. (See *id.* § 19841, subd. (p).) If the Legislature had intended to allow the Bureau unilaterally to limit gaming on a statewide basis, it would have had no reason to specifically authorize the Bureau to recommend such changes to another regulatory body. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13 ["[T]he expression of certain things in a statute necessarily involves exclusion of other things not expressed."] [quoting *Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403].)

The Proposal exceeds the Bureau's limited role. Its express effect is to prohibit all games featuring a player-dealer position that do not contain the rules specified in proposed section 2076. That proposed section states that games featuring a player-dealer position "shall include" the rules specified by the Bureau. (Proposed § 2076, subd. (a).) Those rules not only define the manner of play, but themselves contain prohibitions of game play—including that a "game featur[ing] a rotating player-dealer position shall not ... [a]llow any person to place a wager directly against the TPPPS when the TPPPS is not occupying the player-dealer position" or "[a]llow the TPPPS [sic] settle any wagers at the table when they are not occupying the player-dealer position." (*Id.*, subd. (b).) All games that do not "comply with section 2076" are then "deemed non-compliant" and "approval" for such games is automatically "withdrawn." (Proposed § 2077, subd. (g).) The Proposal thus amounts to a statewide prohibition on all player-dealer games that do not include the Bureau's selected rules—precisely the sort of prohibition that the

Bureau cannot promulgate, and that even the Commission cannot achieve without a full adjudicatory proceeding.

Critically, *neither* the Bureau nor the Commission is entitled to define the outer limits of the Penal Code's bar on banking games, because "only the Legislature can define crimes and penalties." (*People v. Figueroa* (1999) 68 Cal.App.4th 1409, 1414.) Indeed, the Legislature cannot delegate the responsibility to "determine what conduct is unlawful" to an administrative agency because the California Constitution requires the Legislature itself to make such "fundamental policy decisions." *(Ibid.* [citing Cal. Const., art. IV, § 1].) In the absence of a statutory definition of "banking," it is up to the courts, not the Bureau, to either determine the correct interpretation of that prohibition or declare it void for vagueness. (See *People v. Akins* (2005) 128 Cal.App.4th 1376, 1387 ["[T]he courts, not the state and federal agencies ... have the relevant expertise when it comes to interpreting and applying the provisions of the Penal Code."].)

To be sure, Penal Code section 330.11 envisions a role for the Bureau in determining *as part of the approval process* that a particular game is *lawful* because "the rules of the game render the maintenance of or operation of a bank impossible." (Pen. Code, § 330.11.) But there is no authority for the Bureau to define a category of games as *unlawful* and *prohibit them such that their approvals must be withdrawn* due to the Bureau's own interpretation of "banking."

(2) The Bureau Lacks Authority to Revoke Existing Game Approvals

Moreover, the Bureau cannot under any circumstances (i.e., on neither a statewide nor an individual basis) unilaterally revoke an *existing* game approval without an adjudicatory determination that the game is unlawful. The GCA permits the Bureau to place restrictions on how a controlled game is played only *during* the game-approval process and in accordance with the general standards set by the Commission. (See Bus. & Prof. Code, § 19826, subd. (g) [authorizing the Bureau to "[a]pprove the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played"].) The GCA does not allow the Bureau to place restrictions on a game *after* approval, or to revoke any existing game approvals.[3] Instead, it establishes a framework in which the

[3] The Commission's own regulations refute any claim that the Bureau enjoys unilateral authority to revoke game approvals. (See, e.g., Cal. Code Regs., tit. 4, § 12550, subd. (f) [providing that the Commission's disciplinary regulations are not intended to preclude the Bureau "from issuing warning notices, notices to cure,

Commission adjudicates whether a game approval should be withdrawn. (See Bus. & Prof. Code, § 19842 [supplying a legal standard for the Commission's decision to prohibit a game].) Within that framework, if the Bureau believes an "approval should be suspended or revoked," it must (1) "file an accusation with the commission," (*id.* § 19930, subd. (b)), and then (2) prove to the Commission that the game violates federal, state, or local law (*id.* § 19842, subd. (a)). The GCA also provides a specific process for aggrieved persons to obtain judicial review of a Commission decision. (*Id.* § 19811.) By contrast, the GCA provides *no* appeals process to review a decision by the Bureau to revoke a previously granted approval because the GCA does not contemplate the Bureau taking such action in the first place.

(3) The Proposal's Revocation Procedure Undermines Due Process

The Bureau's proposal to sidestep this statutory framework not only is wrong as a statutory matter, but also threatens cardrooms' due-process rights. Indeed, the procedure outlined in the GCA, under which the revocation of *any* prior approval proceeds to a hearing before a neutral adjudicator, is not an optional statutory path—it is "the constitutional floor." (See *California DUI Laws. Assn. v. Dept. of Motor Vehicles* (2022) 77 Cal.App.5th 517, 530 [quotation marks omitted].) Due process prohibits the government from depriving a person of a government-issued right or privilege without granting that person an opportunity to be heard in "a fair hearing before a neutral or unbiased decision-maker." (*Ibid.* [quotation marks omitted].) Thus, under the state and federal Constitutions, a business permit cannot be revoked except "upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation."[4] (See *Bauer v. City of*

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advisory letters regarding violations or possible violations of law, or from withdrawing such upon further investigation," without making any mention of the Bureau's supposed authority to revoke game approvals]; *id.* § 12552, subd. (c) ["Any settlement of an accusation shall be submitted by the Bureau for approval by the Commission"].)

[4] These due-process protections apply "whether the license is granted as a privilege or recognized as a vested right; … it is the policy of our law that a person should not be deprived even of a 'permit' to engage in a legitimate business without a fair and impartial hearing and without an opportunity to present competent evidence for consideration by the licensing authority in opposition to the proposed revocation of his permit." (*Irvine v. State Bd. of Equalization* (1940) 40 Cal.App.2d 280, 284–285 [analyzing an analogous licensing scheme under the Alcoholic Beverage Control

San Diego (1999) 75 Cal.App.4th 1281, 1294 [California Constitution] [quotation marks omitted]; *Barry v. Barchi* (1979) 443 U.S. 55, 66–67 [Fourteenth Amendment].)

Despite this clear law, the Proposal does not envision that a cardroom whose game approval would be revoked would be afforded a hearing before a neutral decisionmaker, or even given a decision specifying the reasons why the approval is being revoked. Rather, the Proposal provides that if a cardroom does not take certain steps to modify a player-dealer game within 60 days of the Proposal's effective date, the Bureau's approval of that game shall be revoked *summarily* and *automatically*. (Proposal § 2077, subds. (a) & (g).) Although the cardroom can appeal the revocation by submitting an objection to the Bureau Chief (now Director), the regulation governing this procedure (which itself has no foundation in the GCA) gives the Director total discretion to deny the objection without a hearing. (See *id*., subd. (g) ["The Chief, in the Chief's discretion, may then grant or deny the objection."].) And, in all events, the Director's review here would be an empty gesture: The decision to revoke the game approval would be "based on a regulation [the Bureau itself] promulgated," so granting the cardroom's objection would be impossible because it would require the Director "to act contrary to [the Bureau's] own rule." (See *Sabatasso v. Superior Court* (2008) 167 Cal.App.4th 791, 795.)

(4) The Proposal's Revocation Procedure Violates the Administrative Procedure Act

The Proposal's revocation procedure violates the APA, as well as due process. "One of the basic tenets of the California APA" is that "the *prosecutory* and, to a lesser extent, investigatory, aspects of administrative matters must be adequately separated from the adjudicatory function." (*Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 91, italics in original; see also Gov. Code, § 11425.10, subd. (a)(4).) The GCA accounts for this principle by instructing the Bureau to instigate revocation proceedings and the Commission to adjudicate them. But the Proposal seeks to bypass this legislative directive by (1) revoking approvals for an entire category of games, *without* the Commission's involvement, and then (2) empowering the Bureau Chief—the agent who promulgated the rule triggering revocation—to unilaterally dispose of objections. The APA and due process both forbid this result. (See *Nightlife Partners*, *supra*, 108 Cal.App.4th at p. 92 ["[A]n employee engaged in prosecuting functions for an agency in a case may not, in the

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Act]; see also *Stewart v. San Mateo County* (1966) 246 Cal.App.2d 273, 283 [emphasizing that a statute should be interpreted to require a hearing in license revocation proceedings unless it expressly provides otherwise].)

same or a factually related case, *participate or advise* in either the decision, or the agency *review's* [sic] of that decision."], italics in original.)

B. The Proposed Regulations Are Premature While Litigation Concerning the Foundational Legal Issues Is Pending

In September 2024, the Legislature passed and the Governor approved Senate Bill No. 549 ("SB 549"). That law states that certain California Indian Tribes "may bring an action in superior court, filed solely against licensed gambling enterprises and third-party providers of proposition player services seeking a declaration as to whether a controlled game operated by a licensed gambling establishment and banked by a third-party provider of proposition player services constitutes a banking card game that violates state law, including tribal gaming rights under Section 19 of Article IV of the California Constitution." (SB 549 § 4 [adding Gov. Code, § 98020, subd. (a)].) The purpose of SB 549 is to "resolv[e] a decade-long dispute between California tribes and California card clubs concerning the legality of those controlled games." (*Id.* § 2.)

In January 2025, several Tribes—Agua Caliente Band of Cahuilla Indians, Barona Band of Mission Indians, Pechanga Band of Indians, Sycuan Band of the Kumeyaay Nation, Viejas Band of Kumeyaay Indians, Yocha Dehe Wintun Nation, and Yuhaaviatam of San Manuel Nation—filed a lawsuit under SB 549, naming dozens of defendants, including the major cardrooms in the state. (See Case No. 25CV000001, filed in Superior Court in the County of Sacramento.) On February 18, those Tribes filed an amended complaint. In addition, a second lawsuit was filed on April 1 by the Rincon Band of Luiseño Mission Indians of the Rincon Reservation and Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation. The two lawsuits are coordinated and underway. The defendants in those cases—which include every operating cardroom and TPPPPS in the State—filed demurrers and motions to strike on May 2, 2025, for hearing on August 8, 2025.

(1) The SB 549 Litigation May Provide Critical Guidance to the Bureau.

The passage of SB 549 and the pending suits for declaratory and injunctive relief raise the immediate prospect that the California judiciary may soon provide critical guidance—or even binding precedent that the Bureau must follow—on the legal issues at the heart of this rulemaking. According to the Bureau, its Proposal would address the purported "problem of allowing the maintenance or operation of a bank in controlled games featuring a rotating player-dealer position." (Initial Statement of Reasons ("ISR") at p. 1.) The Proposal, in the Bureau's view, would

establish rules that "prevent the maintenance or operation of a bank" and "better enforce the prohibition on banking games." (*Id.* at p. 4.) The Bureau's Proposal necessarily implicates the legal standard for determining whether a controlled game is, in fact, a banking game, and how that standard may apply in the context of controlled games featuring a rotating player-dealer position. Indeed, the Bureau requires an accurate interpretation of those legal issues to determine whether there is a "problem of allowing the maintenance or operation of a bank in controlled games featuring a rotating player-dealer position" and, if so, what rules might "better enforce the prohibition on banking games." (ISR at pp. 1, 4.)

Yet those issues—the meaning of the prohibition on banking games and how it applies to controlled games featuring a rotating player-dealer position—are the very issues raised in the SB 549 litigation. SB 549 states that certain Indian Tribes may seek a declaration regarding whether a controlled game "constitutes a banking card game that violates state law." (Gov. Code, § 98020, subd. (a).) Both sets of Tribes to sue under that law have argued that California cardrooms are "offering banked games." (First Amended Complaint at p. 6, *Agua Caliente Band of Cahuilla Indians v. Parkwest Bicycle Casino, LLC*, No. 25CV000001 (Super. Ct. Sacramento County) (*Agua Caliente* FAC); First Amended Complaint at p. 4, *Rincon Band of Luiseno Mission Indians of the Rincon Reservation v. Parkwest Bicycle Casino, LLC*, No. 25CV007594 (Super. Ct. Sacramento County) (*Rincon Band* FAC).) They object specifically to controlled games that "rotate" the player-dealer position "from player to player." (*Agua Caliente* FAC at p. 7; *Rincon Band* FAC at p. 5.) The plaintiffs in the SB 549 litigation are thus currently seeking judicial resolution of the very issues that the Proposal implicates—creating the imminent possibility of definitive judicial rulings as to hundreds of game rules approved by the Bureau and specifically put at issue in the lawsuits.

We do not expect that this litigation will yield any new restrictions on the player-dealer games that are commonly played throughout the State today. If the suit proceeds,[5] we expect that the defendants will explain that controlled games with a rotating player-dealer position fit comfortably within the governing law. As

[5] On May 2, 2025, defendants filed demurrers and motions to strike the *Agua Caliente* Amended Complaint and *Rincon Band* Amended Complaint. The principal demurrer argues that SB 549 is invalid on multiple grounds, including that it is field and obstacle preempted by the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*; it violates article IV, section 19, subdivision (f) of the California Constitution and separation of powers by impermissibly skirting California's compacting process; and it impermissibly cedes prosecutorial power to the Tribal casinos.

explained below, the player-dealer games approved in this state for decades are not "banking games," and thus there is no basis for new rulemaking or judicial restrictions to address any purported "problem of allowing the maintenance or operation of a bank in controlled games featuring a rotating player-dealer position." (ISR at p. 1.)

But even if the Bureau currently believes the law is otherwise, there is no legal or factual urgency for the Bureau to address player-dealer games, after having approved those games for decades, at the very moment the judiciary is considering lawsuits challenging those games. The Bureau should instead wait to see the results of the now-pending litigation. If the courts agree with the Bureau's longstanding view, then there is nothing more for the Bureau to do except to consider codifying its longstanding practice. If the courts articulate a different standard for assessing the legality of player-dealer games than the one that has prevailed for decades, the Bureau could then consider whether any action is warranted based on that judicial guidance. Either way, the Bureau would be far better positioned to determine the best course of action if it were to wait until the end of the pending litigation. Proceeding now risks a needless waste of public resources that could be better spent on important Bureau functions.

(2) The SB 549 Litigation May Produce Judicial Rulings that Conflict with the Bureau's Proposal.

There are numerous possible outcomes of the SB549 litigation that would conflict with the Proposal, establish binding precedent, or would otherwise be essential for the Bureau to consider in any regulatory process. Most notably, that litigation may make clear that the Proposal is premised on an incorrect understanding of the law. For example, the judiciary may explain that—contrary to the Bureau's stated view (see ISR at pp. 1–3)—a controlled game featuring a rotating player-dealer position need not require *acceptance* of the deal to ensure that the game is not banked. Likewise, the judiciary may explain that—contrary to the Bureau's apparent view (see *id.* at pp. 2–4)—a controlled game featuring a rotating player-dealer position need not always meet the standards set forth in Business and Professions Code section 19805, subdivision (c) (see also Pen. Code, § 330.11), because that is only a safe harbor. The judiciary may explain, as well, that the Proposal's reliance on certain language in *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397 is misplaced. (See *post*, Part II.C(1).)

It is contrary to the public interest for the Bureau to rush into a rulemaking process while this litigation is pending, with the potential result that what the Bureau adopts may conflict with judicial precedent. If the Bureau moves forward now, its current rulemaking could quickly be undermined or effectively overruled by

a court decision, potentially forcing the Bureau to rescind or revise its regulations to align with the judiciary's rulings. Moving forward now thus risks an unnecessary and wasteful expenditure of the Bureau's scarce resources and taxpayer dollars. It also risks chaos for the industry. It is possible that the Bureau would revoke game approvals en masse pursuant to this rulemaking, only to learn shortly thereafter that the revoked game rules have always complied with the law. Indeed, if the Bureau completes this rulemaking in the roughly 12-month timeline the Bureau has projected, a court decision may then be imminent. Even a decision that does not reject a fundamental premise of the Bureau's rulemaking could still be essential for the Bureau to consider, such as a decision that provides additional specificity about the legal standard governing the prohibition on banking games.

The result of the Bureau's rush to issue rules prior to such a decision would be needless and substantial economic damage to the industry and local governments. Cardrooms may be forced to change game rules based on this rulemaking, driving patrons away from cardrooms and harming local business, even though a court later determines that the game rules complied with existing law all along. The chaos and uncertainty would be counterproductive to the Bureau's stated goal of providing "clarity as to what games are allowed to be played in California gambling establishments." (ISR at p. 4.) It would also impact local governments and their ability to confidently allocate scarce resources—affecting capital spending, bond issuance, employment targets, and public safety budgets.

Rather than court this unnecessary turmoil, the Bureau should wait and see whether the pending litigation invited by the Legislature yields critical new guidance and precedent that the Bureau must observe, and only then should the Bureau make a decision about whether to issue new regulations—and, if so, what those new regulations should be.

II. The Proposed Regulations Reflect Basic Misapprehensions About the Games at Issue and the Governing Law

The "consistency" requirement under the APA mandates that regulations be "in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." (Gov. Code, § 11349, subd. (d).) The "authority" requirement under the APA mandates that a "provision of law ... permits or obligates the agency to adopt, amend, or repeal a regulation." (*Id.*, subd. (b).) The "necessity" requirement under the APA mandates that "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record." (*Id.*, subd. (a).) The Proposal fails those tests.

A. California's Prohibition on Banking Games Is a Limited Exception to this State's General Acceptance of Gaming

Various forms of gaming have long been prevalent in California. When California attained statehood in 1850, cardrooms were already pervasive. (Wear Simmons, Cal. Research Bureau, CRB 06-004, Gambling in the Golden State—1998 Forward (2006) p. 107.) Other States banned gaming in the mid-1850s. (See, e.g., *State v. Provo* (1961) 44 Haw. 665, 672 ["[I]t was the intention of our legislature to broadly prohibit [all gambling games in the 1850 Hawaii Penal Code] so as to discourage gambling in all its forms."].) By contrast, the earliest statutes passed by the California Legislature included provisions governing the licensing and taxing of gambling establishments. (See Stats. 1851, ch. 9, § 1, p. 166 ["An Act to license gaming"].) California's acceptance of gaming continues today not only in cardrooms, but in many other venues—including at horse racing tracks and through a state lottery system that has raised more than $46 billion for California schools since 1985. (See <https://www.calottery.com/en/about-us>.)

The prohibition on "banking games" is one of several limited exceptions to our State's general acceptance of gaming. The Legislature added that prohibition to section 330 of the Penal Code in 1872. As our Supreme Court has explained, it is "obvious" that section 330 "was intended to ban betting or wagering in regard to a limited number of games." (*In re Hubbard* (1964) 62 Cal.2d 119, 126.) In particular, the Legislature took aim at a small set of games in which "the house had an advantage and limitless funds" (*Tibbetts v. Van de Kamp* (1990) 222 Cal.App.3d 389, 393), with particular concern for games where "the house easily [could] cheat, because the basic simplicity of the games, and the house's control of the devices, render[ed] them more susceptible to manipulation" (*Sullivan v. Fox* (1987) 189 Cal.App.3d 673, 680). By contrast, there is no evidence that the Legislature sought to prohibit player-dealer games—in which the house does not participate in the action, and players have free and equal opportunity to take the player-dealer position.

The Legislature has not further defined the term "banking game," forcing courts to interpret the term (despite its presence in the Penal Code and the serious consequences that follow). Our Supreme Court first accepted a definition in *People v. Carroll* (1889) 80 Cal. 153: "A banking game ... is a game conducted by one or more persons where there is a fund against which everybody has a right to bet, the bank being responsible for the payment of all the funds, taking all that is won, and paying out all that is lost. The fund which is provided for that purpose is generally called the bank, and the person who conducts it the banker." (*Id.* at pp. 157–158 [quotation marks omitted].) Decades later, the Court of Appeal echoed *Carroll*

while focusing in particular on two related aspects of banking: first, that the game placed "one against many," pitting the bank against all other players, and second, that the bank maintained a "common fund" against which any interested players had the right to bet. (*In re Lowrie* (1919) 43 Cal.App. 564, 566–567.) A later decision, *People v. Ambrose* (1953) 122 Cal.App.2d Supp. 966, is much the same, reiterating that the "supreme test of a banking game" is whether the game features "the one against the many," such that the bank itself "pays all the winnings and suffers all the losses." (*Id.* at p. 970.)

Today, the term "[b]anking game" has "come to have a fixed and accepted meaning" in California law: "[T]he 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." (*Sullivan*, *supra*, 189 Cal.App.3d at p. 678.) Our Supreme Court more recently said much the same, defining banking games as those in which "there is a person or entity that participates in the action as 'the one against the many,' ... 'taking on all comers, paying all winners, and collecting from all losers' ... , doing so through a fund generally called the bank." (*Hotel Employees and Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 592 (*HERE*) [citations omitted].) A game can fall within the prohibition on "banking games" only if it has those qualities—that is, it is a game in which (i) a single "person or entity" participates in the action as "the one against the many"; (ii) that person or entity takes on all comers, pays all winners, and collects from all losers; and (iii) that person or entity does so through a single designated "fund generally called the bank."

B. Player-Dealer Games Offered by California Cardrooms and Long Approved in California Are Not Banking Games

The controlled games addressed in the Proposal do not meet the settled test for a "banking game."

(1) California Cardrooms' Player-Dealer Games Are Distinct from Casino Banked Games in Multiple Important Respects

We begin with an explanation of the rules of how cardrooms' player-dealer games are played, because the Bureau's Proposal reflects fundamental misconceptions about how the games work—or at the very least fails to consider key features of cardrooms' player-dealer games that distinguish them from casino-banked games. CGA has produced a video to assist in a proper understanding of

these comments and the relevant gameplay. The video may be found here: <https://youtu.be/8CzE9NnsEb4> (hereafter "Explanation Video").[6]

Participants in a player-dealer game sit or stand around a table with designated wagering areas in front of each seat. The cardroom does not occupy any of those seats or otherwise participate in the game. The cardroom does not place or take any bets, and it does not use its funds to settle any wagers. The cardroom instead facilitates the game by exchanging money for chips that the players around the table may use to wager against one another. During each hand, one participant at the table agrees to be designated the player-dealer, and the other players at the table then bet against the player-dealer. The standard practice is to rotate the player-dealer position by offering the position to the next player in turn after every two hands (referred to as "offering the player-dealer position"). Just as game rules generally give players discretion about what to bet, participants have discretion whether to play one or more hands in the player-dealer position (referred to as "accepting the player-dealer position"); no player is required to accept the player-dealer position. And just as game rules generally treat all players the same, no participant is prohibited from accepting the player-dealer position. The player-dealer position thus rotates around the table in turn until a player chooses to accept. Typically the cardroom will track the player-dealer position by placing a button or placard in front of the participant who accepts the player-dealer position. The button or placard usually has markings on either side indicating whether it is the player-dealer's first or second hand in that position.

Once the player-dealer for a specific hand is determined, the player-dealer selects a fixed and limited amount of chips to wager against the other seated players, while the other players around the table place their own wagers against the player-dealer. Just as game rules generally give players discretion on the size of their bets, there is no obligation for the player-dealer to cover every bet placed against her; instead, the player-dealer selects the wager that she chooses, and only that amount of action will be covered by the player-dealer. Her wager is fixed for the duration of the hand; she cannot change her wager once the cards are dealt, even if the other players around the table have wagered more money than her wager could cover. Cards are then dealt, and players around the table win or lose against the player-dealer depending on the particular rules of play that determine winners and losers. Losing player wagers (to the extent covered by the player-dealer's wager) go from the losing players to the player-dealer, while winning player

[6] As confirmed by the Bureau in email correspondence appended to the end of these comments, the Explanation Video is part of the administrative record.

wagers (to the extent covered by the player-dealer's wager) are paid out from the player-dealer's original wager to the winning players.

Some examples illustrate how, and when, wagers are settled in a player-dealer game.

Example I—Player-Dealer Wager Covers All Action. Consider first a simple example ("Example I"). Player 3 accepts the player-dealer position and wagers $400. Players 1, 2, 4, and 5 each wager $100. This particular game pays out 1:1, such that a player with a winning wager of $100 receives $100. The game is played, and Players 1 and 5 win according to the game rules, while Players 2 and 4 lose according to the game rules. In this example, the player-dealer's wager ($400) happens to cover all of the action at the table ($100 multiplied by 4 players), so all bets are settled. Players 1 and 5 receive $100 each from the player-dealer. Players 2 and 4 pay $100 each to the player-dealer. These outcomes are summarized in the following table:

Example I	Original Wager	Outcome
Player 1	$100	Win $100 from Player 3
Player 2	$100	Lose $100 to Player 3
Player 3 (Player-Dealer)	$400	Net $0 from other players
Player 4	$100	Lose $100 to Player 3
Player 5	$100	Win $100 from Player 3

Example II—Player-Dealer Wager Does Not Cover All Action. Consider next an example in which the player-dealer's wager does *not* cover all of the action at the table ("Example II"), which is shown in the Explanation Video, at time 4:50 after the start of the video. In this example, as in Example I, Player 3 accepts the player-dealer position. And here too, Players 1, 2, 4, and 5 each wager $100 in a game that pays out 1:1 (so, again, a player with a winning wager of $100 will receive $100). But here, Player 3 (the player-dealer) wagers $200—a wager that (unlike in Example I) will *not* cover all of the action at the table. That is not a problem; the game is still played just as it was in Example I. The difference is that not all wagers will be settled, and those that are not settled are simply returned to the player(s).

As in Example I, Players 1 and 5 win according to the game rules, while Players 2 and 4 lose according to the game rules. Game rules will prescribe a method for determining a random order in which to settle bets; in this example, the wagers are to be settled in the following order: Player 1, Player 2, Player 4, Player 5. Following that order, Player 1's wager is settled first, and Player 1 (a winner) receives $100 from the player-dealer. Player 2's wager is settled next, and Player 2 (a loser) pays $100 to the player-dealer. At this point, $200 of action have been settled at the table, so the player-dealer's original wager of $200 has been exhausted. As a result, no other wagers at the table can be settled, and therefore Player 4's and Player 5's wagers are simply returned to them (notwithstanding that Player 4 lost according to the game rules and Player 5 won according to the game rules). The result is that the player-dealer need not take on all others at the table. And the player-dealer can never win or lose more than the fixed amount that she wagered; she cannot use money she won during the hand to settle other bets. In this example, even though Player 3 still has the same amount of chips as her original wager after settling the bets from Players 1 and 2 ($200), those chips are not used to settle Player 4's losing wager or Player 5's winning wager. These outcomes are summarized in the following table:

Example II	Original Wager	Outcome
Player 1	$100	Win $100 from Player 3
Player 2	$100	Lose $100 to Player 3
Player 3 (Player-Dealer)	$200	Net $0 from Players 1 and 2
Player 4	$100	Bet returned
Player 5	$100	Bet returned

Example III—Backline Wager. In situations such as Example II, where the player-dealer's wager does not cover all of the action of the players at the table, others in the cardroom may desire to bet along with the player-dealer, thereby supplementing the wager on the player-dealer position so as to cover more (or even all) of the action at the table. That is generally permitted through a mechanism called backline wagering. A backline wager occurs when a person (whether a seated player or not) places a bet in a betting circle in front of the player-dealer, next to the player-dealer's own wager. When this occurs, the player-dealer's wager is used to settle all bets until it is exhausted, and then the backline wager is used to settle any remaining bets until it too is exhausted. (A backline wager can also be placed

behind the wager of a player *other* than the player-dealer, effectively allowing multiple people to bet on the same player position.) Backline wagering is depicted in the Explanation Video, beginning at time 7:10 after the start of the video.

For example, Example III is a situation identical to Example II, except that another patron of the cardroom places a backline wager of $200 behind Player 3, the acting player-dealer. Player 1's wager is settled first, and Player 1 (a winner) receives $100 from the player-dealer. Player 2's wager is settled next, and Player 2 (a loser) pays $100 to the player-dealer. At this point, as in Example II, $200 of action have been settled at the table, so the player-dealer's original wager of $200 has been exhausted. But now, unlike in Example II, there is an additional wager on the player-dealer position—the backline wager. That wager of $200 is then used to settle Player 4's $100 loss (which goes from Player 4 to the backline wagerer) and Player 5's $100 win (which goes from the backline wagerer to Player 5). The result is that two participants (Player 3 and the backline wagerer) divide the action on the player-dealer position; no one participant covers all the wagers, pays all the winners, and collects from all the losers. The outcomes are summarized in the following table:

Example III	Original Wager	Outcome
Player 1	$100	Win $100 from Player 3
Player 2	$100	Lose $100 to Player 3
Player 3 Player-Dealer	$200	Net $0 from Players 1 and 2
Backline Wagerer on the Player-Dealer Position	$200	Net $0 from Players 4 and 5
Player 4	$100	Lose $100 to Backline Wagerer
Player 5	$100	Win $100 from Backline Wagerer

Example IV—Combined Wager. There is another way for multiple participants to wager on the player-dealer position. A participant other than the one who accepted the player-dealer position may take part in a combined wager with the participant who accepted the player-dealer position. When this occurs, the two participants combine their funds to create one wager in a betting circle located

in front of the player-dealer, and their combined fund is used to settle bets around the table until it is exhausted. For example, Players 3 and 4 might decide to combine wagers of $200 each on the player-dealer position ("Example IV"). That combined $400 could then be used to settle bets placed on the other player positions. So, for example, if Players 1, 2, and 5 each bet $100, a combined fund of $400 from Players 3 and 4 could cover all the action, even though neither Player 3's wager nor Player 4's wager could do so alone. Players 3 and 4 would then equally split any winnings and share in any losings. As with backline wagers, the result is that two participants (here Players 3 and 4) divide the action on the player-dealer position; no one participant covers all the wagers, pays all the winners, or collects from all the losers. Here, if all players lose to the player-dealer, Players 3 and 4 would collectively win $300, and would each receive $150. This example is depicted in the Explanation Video, beginning at 8:49. The outcomes are summarized in the following table:

Example IV	Original Wager	Outcome
Player 1	$100	Lose $100 to Players 3 and 4
Player 2	$100	Lose $100 to Players 3 and 4
Player 3 Player-Dealer	$200	Win $150 from Players 1, 2, 5
Player 4 Combined Wager with Player-Dealer	$200	Win $150 from Players 1, 2, 5
Player 5	$100	Lose $100 to Players 3 and 4

Example V—Direct Bet. Direct bets can also have the effect of sharing the action on the player-dealer position. A direct bet occurs when a player places a wager at the player-dealer position with a marker on top of the wager indicating this it is specific to another player at the table. In other words, a direct bet is a wager between two players on whether a particular player's hand will beat the player-dealer's hand or not. For example, Player 2 might place a direct bet of $100 on the player-dealer hand against Player 4 ("Example V"). That effectively establishes a separate game fund that is available only to Player 4, who can now bet against Player 2 on whether Player 4's hand will beat the player-dealer hand. If Player 4 decides to take that bet by placing a matching wager of $100, Player 4 and Player 2 enter into a one-on-one wager that does not involve any other players at the table (including the acting player-dealer). As with backline wagers and

combined wagers, the result is that two participants (here Players 2 and 3) divide the action on the player-dealer position; no one participant covers all the wagers, pays all the winners, or collects from all the losers. An example of a direct bet is depicted in the Explanation Video, beginning at 9:32. The outcomes are summarized in the following table:

Example V	Original Wager	Direct Bet	Outcome
Player 1	$100		Lose $100 to Player 3
Player 2		$100 vs. Player 4	Lose $100 to Player 4
Player 3 Player-Dealer	$400		Net $0 from other players
Player 4		$100 vs. Player 2	Win $100 from Player 2
Player 5	$100		Win $100 from Player 3

In summary, in a player-dealer game:

- The players around the table wager against one another, rather than against the house. In no circumstances does the house make or settle any wagers.

- Any participant may take the player-dealer position. It is not controlled by the house or any other person or entity, but instead is offered in turn after every two hands to the next player, who has the freedom to accept the position if she wishes.

- The game provides multiple ways for any participant to wager on the player-dealer position: (a) by accepting the player-dealer position when offered to her, (b) by placing a backline wager on the player-dealer position, (c) by participating in a combined wager with the player-dealer, and (d) by placing a direct bet on the player-dealer position. These bets are at the discretion of participants in the game; nothing in the rules requires a person to place such a bet or prevents a person from placing such a bet.

- In some hands there is one person wagering on the player-dealer position. In other hands there is more than one person, such as when a participant places a backline wager behind the player-dealer, or where a participant combines her wager with the player-dealer, or where a participant places a direct bet on the player-dealer position. Those differences are a function of the individual choices of the participants in the game. When more than one person wagers on the player-dealer position, the action on that position is divided and no one player covers all wagers, pays all winners, and collects from all losers.

- Players around the table may seek to place wagers against the player-dealer position, but there is no guarantee that those wagers will be accepted or settled because there is no requirement that anyone place a bet of any particular size on the player-dealer position. Consequently, there is no unlimited fund available to settle all wagers, nor does any participant have the right to receive action from any other participant. Instead, players determine their own wagers, and they have their wagers settled only until the fixed and limited wager(s) on the player-dealer position is (or are) exhausted.

Typical banked card games played in Nevada, New Jersey, or California tribal casinos differ from the above in every respect. In these casino-banked games:

- Players around the table wager against the house—not against each other.

- The house is the only permitted dealer and controls the single fund used to settle all bets placed against the dealer.

- Players at the casino have no opportunity to wager on the dealer position, whether alone or in combination with others, except in unusual circumstances (see *post*, note 7).

- The game always pits one player (the house) against all other players, rather than allowing multiple players to wager on the dealer's hand.

- Players always have a right to bet against the dealer in any amount (up to stated table limits).

- The dealer's hand is backed by a *bank*—an unlimited fund that provides guaranteed coverage of all bets placed by players at the game, paying all winners and collecting from all losers, subject to house rules

> on bet and payout sizes. Players are never forced to take back their wager or to find another source of payment.

The resulting distinctions between player-dealer games and banked games can be summarized as follows:

No House Participation. At a California cardroom, the house does not bank or otherwise participate in the game. It does not take or place bets, and it does not settle wagers. The players instead wager against each other. In a casino banked game, all of the players at the table wager against the house, which participates in the game as the dealer and controls the single designated fund that always settles all wagers.

No Control of the Player-Dealer Position. At a California cardroom, neither the house nor any other player has control over the player-dealer position. Rather, the rules put all participants on equal footing, because *any* player may take the player-dealer position when it is offered in turn after every two hands of play. Nobody—not the house, not the current player-dealer, not anyone else in the cardroom—may prevent a player from accepting the player-dealer position when it is offered to her. In a casino banked game, no person or entity other than the house is allowed to occupy the dealer position, with limited exceptions (see *post*, note 7).

Shared Wagers on the Player-Dealer Position. At a California cardroom, multiple players may wager on the player-dealer position. Not only may any player accept the player-dealer position when offered, but in any given hand multiple players can potentially wager on the player-dealer's hand—such as when a player places a backline wager behind the player-dealer (as in Example III above), or where a player combines her wager with the player-dealer (as in Example IV above), or where a player places a direct bet behind the player-dealer against another player (as in Example V). In all of these scenarios, multiple participants are wagering on the player-dealer position, and multiple funds may be used to settle wagers around the table. In a casino banked game, the house stands alone as the only participant wagering on the dealer position; it is, by rule, the one against the many.

No Obligation for the Dealer to Settle Wagers. At a California cardroom, the player-dealer has no obligation to settle all the wagers around the table. Instead, the player-dealer places a fixed and limited wager that (as in Example II above) need not be sufficient to cover all of the players' action at the table. The player-dealer takes on the other players only up until her original wager is exhausted. As a result, no player at a California cardroom ever has a right to complete a wager against the player-dealer; each player's wager is settled against the player-dealer's

wager only if there are sufficient funds for settlement based on the amount the player-dealer chooses to wager prior to the start of the hand and the random order in which wagers are settled. Some winning wagers may not be paid, and some losing wagers may not be collected. In a casino banked game, the house dealer always covers all wagers, providing an unlimited fund against which all other players have a right to play. The house uses that fund to settle all wagers at the table—paying all winners and collecting from all losers.

(2) These Distinctions Make Player-Dealer Games Fundamentally Distinct from a Banking Game

As explained, a banking game is one in which "there is a person or entity that participates in the action as 'the one against the many,' ... 'taking on all comers, paying all winners, and collecting from all losers' ... , doing so through a fund generally called the bank." (*HERE*, *supra*, 21 Cal.4th at p. 592 [citations omitted].) Again, a game can fall within the prohibition on "banking games" only if it has all those qualities—that is, it is a game in which (i) a single "person or entity" participates in the action as "the one against the many"; (ii) that person or entity takes on all comers, pays all winners, and collects from all losers; and (iii) that person or entity does so through a single designated "fund generally called the bank." Cardrooms' player-dealer games meet *none* of the three conditions for a banking game, let alone all three.

First, in a cardroom player-dealer game, there is no single "person or entity" that participates in the action as "the one against the many." A casino banked game has that quality because a single player (the house) has complete control of the dealer position—only the house may occupy that position, and no other player may wager on it. Every game thus always pits the house alone against the players at the table. A player-dealer game is fundamentally different. *Any* participant may take the player-dealer position when it is offered in turn. It is not reserved for any single "person or entity." And participants may wager on the player-dealer position even when they do not occupy the player-dealer position—by placing a backline wager on the player-dealer position, or by combining wagers with the player-dealer, or by placing a direct bet on the player-dealer position against another player. In all of these instances, the game cannot be described as "the *one* against the many" because *multiple* players are wagering on the player-dealer position. It therefore fails what one court has described as the "supreme test of a banking game"—whether *one* person competes against all others, paying "all the winnings" and suffering "all the losses." (*Ambrose*, *supra*, 122 Cal.App.2d at p. 970.)

Second, in a cardroom player-dealer game, no participant has the responsibility of "taking on all comers, paying all winners, and collecting from all

losers." (*Sullivan*, *supra*, 189 Cal.App.3d at p. 678.) In a casino-banked game, the house has precisely that responsibility—it provides an unlimited "fund against which everybody has a right to bet." (*Carroll*, *supra*, 80 Cal. at pp. 157–158; see also *W. Telcon, Inc. v. Cal. State Lottery* (1996) 13 Cal.4th 475, 488 [identifying the house's possible obligation "to pay out more than the amounts wagered on a particular game" as a distinguishing feature of a banked game, as compared to a lottery prize funded only with wagers]; *In re Lowrie*, *supra*, 43 Cal.App. at p. 567 [holding a game was banked where, *inter alia*, players could bet as many chips as they had purchased from defendant "and in each case the defendant covered the bet by a like number of chips"].) But in a cardroom player-dealer game, no participant has a right to bet against the player-dealer. Instead, the player-dealer places a fixed and limited wager and settles only as much action as that fixed and limited wager covers. The player-dealer has no obligation to take on all comers to the table—she takes on only as many players as her fixed and limited wager will permit, which is in turn a function of each participant's free choice of how much to wager.[7] As in Example II above (where the player-dealer's wager was insufficient to cover wagers of two players at the table), that may mean that some players at the table will not have their wagers settled and will receive them back. Or, as in Example III above (where a backline wager was placed behind the player-dealer position), that may mean that another participant will settle other players' wagers. The potential for either circumstance means that the player-dealer simply does not "tak[e] on all comers, pay[] all winners, and collect[] from all losers."

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[7] The rules of player-dealer games impose no requirement that the player-dealer's wager (or the combination of wagers on the player-dealer position) cover all action at the table. That too distinguishes player-dealer games from casino-banked games. In a typical casino-banked game, the house covers all of the action placed when the hand is dealt through its unlimited fund. We are aware of some exceptions to that rule for certain pai gow games offered by Las Vegas casinos, wherein a player may accept the "banker" position. But, critically, those games permit a player to accept the "banker" position *only* if the player has "enough currency to cover all of the player's bets on the table." (Vegas Aces, *How to Deal Pai-Gow Poker, Part 4: A Vegas Aces Guide* <https://www.vegas-aces.com/learn/deal-pai-gow-poker-04-taking-paying-bets> [as of Apr. 24, 2025]; see also *ibid.* ["[T]he Player-Banker must have enough money to cover all of those bets."].) The player-banker must relinquish the position if she is unwilling to cover all the action. That requirement in Las Vegas pai gow games ensures that the banker takes on all comers and pays all winners. In a player-dealer game, by contrast, a person may accept the player-dealer position regardless of her ability to cover all wagers at the table, and thus has no obligation to take on all comers and settle all wagers around the table.

Third, in a cardroom player-dealer game, there is never a single designated fund that settles all wagers. Again, in a casino-banked game, the house operates a fund called the bank, which is "responsible for the payment of all the funds" wagered at the table. (*Carroll*, *supra*, 80 Cal. at p. 158; see also *Sullivan*, *supra*, 189 Cal.App.3d at p. 679 [explaining that the prohibition on "banking" "pertains to situations where the house is actually involved in play, its status as the ultimate source and repository of funds"].) But in a cardroom player-dealer game, there are multiple funds that could settle wagers at the table, none of which belongs to the house. Every seated participant at the table has the opportunity to take the player-dealer position, meaning that each player can operate a fund that settles wagers from other players (subject to the limits of the player-dealer's wager). And, even in a single hand, there may be multiple funds available to settle wagers—such as where a backline wager is placed behind the player-dealer position (as in Example III above), or where a combined wager is placed with the player-dealer (as in Example IV above), or where a direct bet is placed against behind the player-dealer (as in Example V above).

The Proposal does not address, much less refute, any of these straightforward reasons why player-dealer games are fundamentally incompatible with the definition of a banking game. The Proposal never discusses the significance of fixed and limited wagers, or the ways in which multiple players may wager on the player-dealer position, including in the same hand. The Proposal does not address whether the Bureau even considered these features of cardroom player-dealer games when issuing the Proposal, except to the extent it illogically *restricts* them (see *post*, Parts III.C(2), IV.A). The Proposal likewise provides no explanation for why cardroom player-dealer games meet any, much less all, of the three preconditions for a "banking game" under California law. Without such explanations, we cannot comment fully on why the Bureau may believe it has the requisite "authority" to upend the player-dealer games that have long been approved in this State, or why it is "[n]ecess[ary]" for the Bureau to do so, or how the Bureau can show "[c]onsistency" with governing law. (See Gov. Code, §11349.1.) But it is clear that such a regulatory effort is not warranted under longstanding California law.

C. The Bureau's Explanation for Its Proposal Places Unjustified Reliance on *Oliver* and Commits Critical Legal Errors

Rather than engage with the fundamental question of whether cardroom player-dealer games satisfy the "banking game" standard laid out by the California Supreme Court, the Proposal offers only a terse basis for the new regulations. (See ISR at pp. 1–4; Notice of Proposed Rulemaking (NPR) at pp. 3–4.) The Proposal's analysis seems to proceed as follows: First, the Proposal asserts that a lower

appellate court decision, *Oliver v. County of Los Angeles*, specifies the proper standard for determining whether a player-dealer game is a prohibited "banking game" under Penal Code section 330. The Proposal views this decision as prohibiting player-dealer games that "provide for the *offer* of the opportunity to act as the player-dealer," without requiring *acceptance* of the player-dealer position—allowing, in its view, for "the player-dealer position [to remain] with one party for an unrestricted time." (ISR at p. 1.) Second, the Proposal asserts that, following the enactment of Penal Code section 330.11 and its mirror provision in Business and Professions Code section 19805, subdivision (c) (hereafter section 330.11) after the *Oliver* decision, a player-dealer game must meet the criteria set forth in that provision or else it is a prohibited banking game. (See, e.g., NPR at pp. 3–4.) Third, the Proposal suggests that cardroom games as currently played do not meet those criteria.

Each of those analytical steps is erroneous.

(1) The Proposal Wrongly Relies on *Oliver*

Oliver does not provide the appropriate standard for determining whether a banking game exists, nor does it otherwise provide an adequate basis for the Proposal. The Proposal's extensive reliance on *Oliver*, evident from its repeated invocation of the decision (see, e.g., ISR at pp. 1–3; NPR at p. 3), undermines the entirety of this rulemaking.

In *Oliver*, the Second District Court of Appeal held that a game of Newjack was a prohibited banking game. In that court's view, a game is banked "if under the rules of that game, it is possible that the house, another entity, a player, or an observer can maintain a bank or operate as a bank during the play of the game." (*Oliver*, *supra*, 66 Cal.App.4th at p. 1408.) The relevant question, according to that court, was whether the rules allowed for the "potential" of banking. (*Ibid.*) As to the game at issue, the court noted that "the player-dealer position does not *have* to rotate among the players. If the other players decline to accept the player-dealer position, one player ... with a significant amount of money to bet can hold the position of player-dealer for a long time, and thus keep the inherent playing advantage for him or herself." (*Id.* at pp. 1408–1409.) In the court's view, this potential set of circumstances would have the "effect" of creating a "banked game." (*Ibid.*) The Fourth District Court of Appeal relied on *Oliver* one year later in reaching a similar decision as to a game called Sycuan 21, albeit with the benefit of

only limited briefing on the relevant issue. (See *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 492.)[8]

These two decisions (collectively referred to as *Oliver*) fail to correctly articulate the settled law regarding banking. They contradict earlier decisions. And they do not acknowledge (let alone analyze) many relevant features of player-dealer games—including the fixed and limited wagers placed by the player-dealer and the effect of backline, combined, and direct wagers.

a. Oliver *Is Inconsistent with the Definition of "Banking."* As an initial matter, *Oliver* is at odds with the foundational meaning of a "banking game." As explained (see *ante*, Part II.A), the term "[b]anking game" has "come to have a fixed and accepted meaning" under California law: "[T]he 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." (*Sullivan*, *supra*, 189 Cal.App.3d at p. 678.) Our Supreme Court echoed this definition even after *Oliver*, defining banking games as those in which "there is a person or entity that participates in the action as 'the one against the many,' ... 'taking on all comers, paying all winners, and collecting from all losers' ... , doing so through a fund generally called the bank." (*HERE*, *supra*, 21 Cal.4th at p. 592 [citations omitted].) As explained above, cardroom player-dealer games do not meet this definition—regardless of the fact that participants may choose whether to accept the deal or not when it is offered to them in turn. (See *ante*, Part II.B.) The offer itself ensures that no player has control of the player-dealer position, because any participant may freely choose to take it, and no participant has the ability to prevent another participant from accepting the player-dealer position. That is fundamentally different from the casino-style banked games that are prohibited in this State.

Oliver counters that offer-only rotation rules create the "potential" that one player can occupy the player-dealer position for a "long time." (*Oliver*, *supra*, 66

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[8] The dispute in *Kelly* centered on an allegation that a tribal cardroom had cheated certain game participants through the use of marked cards. The plaintiffs were investors behind those participants. They affirmatively alleged in their complaint that they had "'banked' Blackjack games at the Sycuan Casino by financially backing the Blackjack dealer." (*Kelly*, *supra*, 72 Cal.App.4th at p. 491 [quotation marks omitted].) Because the trial court held that the rule against recovery of illegal gambling debts barred their complaint, the plaintiffs asserted, for the first time on appeal, that Sycuan 21 was not a banked game. The briefing in *Kelly* occurred a year before *Oliver* and provided only limited treatment of the banking issue.

Cal.App.4th at pp. 1408–1409.) Missing from *Oliver* is any analytical explanation why that result would make a game a "banking" game. If one participant happens to occupy the player-dealer position for a long time, that is entirely a function of *other players' choices*—that they have independently exercised their option to decline the player-dealer position when it was offered to them. It is outside the control of the person occupying the player-dealer position, and nothing in the rules controls who can or cannot be in the player-dealer position. And even in a scenario where only one participant in the game opts to accept the player-dealer position, the game as a whole is not "the one against the many," but instead puts all players on an equal footing because any player may choose freely whether to accept the player-dealer position or not. That, again, is far different from a casino-style banked game, where the rules of the game prevent all participants except the house from taking the dealer position, even if they want it—guaranteeing that the house, and only the house, is "the ultimate source and repository of funds." (*Sullivan*, *supra*, 189 Cal. App. 3d at p. 679; see also *Tibbetts*, *supra*, 222 Cal.App.3d at p. 393.) In any event, *Oliver* is wrong to base any decision on the supposed "potential" for a game to become banked. The prohibition on "banking" appears in the Penal Code. A person cannot violate a criminal law based only on the mere "potential" for a violation.

The court in *Oliver* expressed concern that, in a cardroom player-dealer game, "[i]f the other players decline to accept the player-dealer position, one player ... can ... keep the inherent playing advantage for him or herself." (*Oliver*, *supra*, 66 Cal.App.4th at pp. 1408–1409.) That reasoning is self-contradictory. The player-dealer in a California cardroom has no way to prevent another player from taking the player-dealer position; the choice whether to accept that position or not is freely up to each player around the table. It is never possible for the person in the player-dealer position to "keep" an "inherent playing advantage for him or herself" for the simple reason that she has no influence on who will accept the position next. As *Oliver* even acknowledges, the next occupant of the player-dealer position is decided by the choices of "*other* players."

Moreover, *Oliver* ignores the many other aspects of cardroom player-dealer game rules that distinguish such games from banking games. For example, player-dealers place a fixed and limited wager, and thus (unlike a bank) have no obligation to take on all comers and pay all winners; they settle bets only until their own bet is exhausted. (See *ante*, Part II.B(1) [Example II].) And there are several ways for multiple players to wager on the player-dealer position at once—through backline wagering, combined wagers, and direct betting—all of which ensure that the game is not "the one against the many." (See *ante*, Part II.B(1) [Examples III-V].) These features of cardroom player-dealer games prevent banking on a hand-by-hand

basis—regardless of whether any particular player is in the player-dealer position for a "long time" over the course of a game.

b. Oliver *Is Inconsistent with Other Cases.* *Oliver* is also in sharp tension with other appellate caselaw. Four other Court of Appeal decisions have upheld player-dealer games without any focus on whether a single player could remain in the player-dealer position for a "long time" or whether the game mandated acceptance of the deal at any particular interval. (*City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1563, 1568–1569; *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 250; *Sullivan*, *supra*, 189 Cal.App.3d at pp. 676, fn. 2, 678; *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, 1294, fn. 2.)

The decisions in *Huntington Park* and *Bell Gardens* are especially instructive. In *Huntington Park*, the Second District Court of Appeal held that a pai gow game was not banked. (*Huntington Park*, *supra*, 206 Cal.App.3d at p. 245.) After restating *Sullivan*'s definition of a "banking game," the court held that "under the present facts pai gow is not a banking game proscribed under section 330 since the record does not establish that either plaintiffs (the house) or any other entity maintains or operates a 'bank.'" (*Id.* at p. 250.) Notably, *Huntington Park* did not inquire whether participants in the game could accept or decline the player-dealer position—which is functionally the determining rule on *Oliver*'s analysis. In a footnote, the *Huntington Park* court clarified that the facts of the case did not merit reaching the question of whether "a 'banking game' would result if a person other than the 'house' were to maintain and operate the 'bank.'" (*Id.* at p. 250, fn. 6.)

The Second District confirmed its approval of games with a rotating player-dealer position three years later, in *Bell Gardens*. Between *Huntington Park* and *Bell Gardens*, the County of Los Angeles had continued to interfere with variants of pai gow in which "[t]he position of dealer rotate[d] systematically among the players and each player ha[d] the opportunity to act as dealer for two consecutive rounds." (*Bell Gardens*, *supra*, 231 Cal.App.3d at p. 1566.) When the affected cardrooms sought relief from the County's criminal raids, the County argued that the footnote in *Huntington Park* left open the possibility that the player-dealers (rather than the cardrooms) were banking the games. The Second District disagreed. In its view, the footnote was "merely parenthetic" to the *Huntington Park* decision, and meant to account for the possibility that a future rule change might permit players to act as the bank. (*Id.* at p. 1569.) Because the rotation rule in the games at issue was "identical to the betting format involved in [] *Huntington Park*," the court swatted down the appeal as frivolous and imposed sanctions on the County. (*Ibid.*)

These decisions are irreconcilable with *Oliver*. They approve of player-dealer games in which "each player ha[d] the *opportunity* to act as dealer for two consecutive rounds." (*Bell Gardens*, *supra*, 231 Cal.App.3d at p. 1566, italics added.) They do not state, or even suggest, that variations in the frequency of accepting the player-dealer position could transform such an approved game into a prohibited banking game. These decisions thus stand in stark contrast to *Oliver*, which objected to games in which "the player-dealer position does not *have* to rotate among the players." (*Oliver*, *supra*, 66 Cal.App.4th at p. 1408.) *Oliver* premised its decision on the assumption that the games in prior cases *required* acceptance of the player-dealer position as it rotates. But it failed to address *Bell Gardens*, which expressly described rules without mentioning any such requirement. The Proposal does not explain why the Bureau proposes to ignore, rather than to follow, the weight of authority that accords with player-dealer games long approved in California.

c. *The Bureau Is Not Bound by* Oliver. Rather than refute (or even address) any of the issues with *Oliver*, the Proposal suggests that the Bureau views itself as bound by *Oliver* because, in the Bureau's view, its "definition of a banking game was adopted by the California Supreme Court in [*HERE*]." (ISR at p. 3.) That statement is a clear error of law that fundamentally undermines the entirety of this rulemaking. *HERE* adopted one specific aspect of *Oliver*—its holding that a banking game "may be banked by someone other than the owner of the gambling facility." (*HERE*, *supra*, 21 Cal.4th at p. 608.) *HERE* did not adopt any other aspect of *Oliver*, either explicitly or implicitly. It certainly did not adopt its "definition of a banking game." (ISR at p. 3.) To the contrary, *HERE* provided the very definition of a "banking game" that demonstrates the legality of cardroom player-dealer games—it neither quotes nor cites *Oliver*'s statements about the definition of "banking game." (See *ante*, Part II.B.) *HERE* never says that a player-dealer game may be banked if a single player holds the player-dealer position for a long time, nor does it cast any doubt on so-called "offer-only" rotation rules.

To the contrary, *HERE* provides strong support for the legality of those games. That decision analyzed the 1984 constitutional amendment prohibiting "casinos of the type currently operating in Nevada and New Jersey." (Cal. Const. art. IV, § 19, subd. (e).) The Court explained that the "constitutional amenders must have had in mind a type of gambling house unique to or particularly associated with Nevada and New Jersey, since they chose to define the prohibited institution by reference to those states." (*HERE*, *supra*, 21 Cal.4th at p. 605.) "Similarly," the Court explained, the typo of casino prohibited by the 1984 amendment "presumably refers to a gambling facility that did *not* legally operate in California." (*Ibid.*, italics in original.) "The type of casino then operating in

California is what has commonly been called a 'card room' … or 'card club' … , a type that did not offer gaming activities including banking games." (*Ibid.* [citations omitted].) Accordingly, *HERE* makes clear that cardroom gaming—including the player-dealer games that have long been featured in those establishments—is distinct from prohibited, casino-style gaming. For example, the game at issue in *Huntington Park* was authorized by a city ordinance enacted in August 1984 (see *Huntington Park*, *supra*, 206 Cal.App.3d at p. 244)—months *before* voters approved the 1984 constitutional amendment.

HERE is also an excellent example of how banking can exist in different forms, but cardroom player-dealer games is not one of them. *HERE* held invalid a tribal "player's pool" system because the pooled fund was "the only permitted source of payouts," and it did not make a fixed and limited wager on each hand. (*HERE*, *supra,* 21 Cal.4th at pp. 606–607.) Because there was no opportunity for anyone but the pool to pay and collect bets, "[t]he *pool* itself function[ed] as a bank, collecting from all losers and paying all winners." (*Id.* at p. 608, fn. 4.) None of that is true about cardroom player-dealer games, which allow *any* participant to act as the player-dealer, and require that all participants place only fixed and limited wagers. In short, the features that our Supreme Court regarded as dispositive in *HERE* all weigh dispositively *against* the view that cardroom player-dealer games are banking games. For similar reasons, the notion that *HERE* adopted *Oliver* has no support in *HERE*'s reasoning. If the Bureau intends to proceed with rulemaking based on its apparent view that *HERE* adopted *Oliver*, it is essential that the Bureau offer its reasoning, if only so that such reasoning can be examined in any necessary judicial challenge to the proposed regulations.

No other reason exists for the Bureau to follow an erroneous, outlier appellate decision. No court in this State would need to follow *Oliver*. (See *The Urban Wildlands Group., Inc. v. City of Los Angeles* (2017) 10 Cal.App.5th 993, 1002 ["When there is a division in Court of Appeal opinions, a trial court chooses which line of authority to follow."]; *Sarti v. Salt Creek Ltd.* (2008) 167 Cal.App.4th 1187, 1193–1194 [explaining that "there is no horizontal stare decisis in the California Court of Appeal," with the expectation that sister Courts of Appeal may take a "critical approach" to one another's opinions and "decline to follow" them].) And *Oliver* is against the overwhelming weight of authority going back to the earliest definitions of banking. The Bureau should cease relying on *Oliver*.

d. ***In All Events,*** **Oliver** ***Does Not Support the Proposal.*** Finally, even if the Bureau followed *Oliver*, that decision still would not support the central elements of the Proposal.

The Proposal requires acceptance of the deal by a new player after 40 minutes of play, but *Oliver* does not include a 40-minute standard and the Bureau never explains why that particular time limit matches the "long time" threshold set forth in *Oliver*. There is nothing in the administrative record that analyzes or explains what a "long time" means in the context of a player-dealer game. Nor does the Proposal consider (and explain its reasons for rejecting) alternatives that may better reflect that standard. (See *post*, Part III.D(3).) The absence of such consideration is particularly concerning in light of the wide variety of games that the Proposal covers—from games that average about 15 hands per hour, to games that average about 35 hands per hour.

The Proposal further requires offers of the player-dealer position after every hand, rather than the industry practice of offering the position after every two hands. But *Oliver* is silent on frequency of the offer. Nothing in *Oliver* requires or even suggests that the offer must occur after every hand to prevent a game from being banked. To the contrary, *Oliver* objected only to a single player holding the player-dealer position for a long time, and held only that the game at issue had the "potential" to be banked—all of which would not make sense if it was a problem for the player-dealer position to remain with a single player for merely two consecutive hands.

Other aspects of the Proposal are also unsupported by *Oliver*. The Proposal generally requires acceptance of the deal by at least *two* players other than the TPPPPS, even though an acceptance by even one player who was not previously the player-dealer would suffice to stop a single player from holding the player-dealer position for a long time. The Proposal prohibits more than one TPPPPS player from participating at a table, but that rule contradicts *Oliver* because it makes it *less* likely that multiple players will accept the player-dealer position. (See *post*, Part III.C(2).) Likewise, the Proposal's restrictions on backline, shared, or direct wagers contradict *Oliver* because those wagering mechanisms split the action on the player-dealer position and thus ensure that no one player takes on all comers, pays all winners, and collects from all losers. In short, even if *Oliver* is a proper decision on which to rely, it does not support the Proposal.

(2) Section 330.11 Is a Safe Harbor, Not a Requirement for Player-Dealer Games

The Proposal observes that, after *Oliver* and *HERE*, the Legislature passed AB 1416, adding section 330.11 to the Penal Code. The Proposal expresses the Bureau's current view that this provision "require[s] the player-dealer position to be continuously and systematically rotated among each player if a cardroom game features a player-dealer position." (NPR at p. 4; see also ISR at p. 6 [asserting that

a rotation rule is "necessary to ensure that the player-dealer position actually rotates continuously and systematically so as not to bring a game within the definition of a banking game as specified in Business and Professions Code section 19805, subdivision (c)"]; NPR at p. 5 [asserting that a rule is required to "prevent the game from falling within the definition of a banking game or banked game under Business and Professions Code section 19805, subdivision (c)"].) The view that section 330.11 states a "require[ment]" rather than a safe harbor is wrong as a straightforward matter of statutory construction.

This issue begins and ends with the statutory text. The relevant provision states:

> "Banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the 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 purposes of this section, it is not the intent of the Legislature to mandate acceptance of the deal by every player if the [agency] 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-dealer position.

(Pen. Code, § 330.11; Bus. & Prof. Code, § 19805, subd. (c), emphasis added.) This provision is expressly a safe harbor, not a requirement. This provision states what the term "banking" or "banked" game "does not include." It therefore establishes that a certain category of games are *not* banking games. The provision does not purport in any respect to define what the term banking or banked game *does* include, nor does it so much as suggest that it is specifying the outer limits of what games are permitted in this State. (Cf. *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 184 [explaining that a statute must "actually bar" conduct for liability to attach, "not merely fail to allow it"].)

The legislative history reinforces that the Legislature intended Penal Code section 330.11 as a safe harbor, not as a requirement. The initial iteration of Penal Code section 330.11 included an affirmative definition of "banking," with the aim of "clarify[ing] once and for all" California's banking standard. (See Sen. Com. on Governmental Org., Staff Analysis of Assem. Bill No. 1416 (1999–2000 Reg. Sess.) as amended Apr. 4, 2000, p. 7.) After the Governor and Attorney General questioned the constitutionality and accuracy of the potential definition, the

Legislature agreed to avoid the potential controversy by passing a clean-up bill removing the definition from the statute. Penal Code section 330.11 now only says "what a bank game *is not*." (See Assemblymember Herb J. Wesson, letter to Assembly re Assem. Bill No. 54 (2001–2002 Reg. Sess.).) The legislative history further demonstrates that the purpose of section 330.11 was to confirm the legality of player-dealer games under rules that had long been approved by the courts and the Bureau—not to enact a new banking standard. (See *post*, Part II.C(3).)

The law on this point is crystal clear: Penal Code section 330.11 (and its counterpart in the Business and Professions Code) is a safe harbor. If a game falls within that provision, it is not a banking game. If a game does not fall within that provision, it may *or may not* be a banking game, but that question must be answered by reference to the longstanding judicial interpretation of "banking game." The Proposal is based on the incorrect premise that section 330.11 is a "require[ment]" for player-dealer games (NPR at p. 3), and thus the Bureau has never analyzed whether cardroom player-dealer games are banked under California law.[9] That legal error undermines the entirety of this rulemaking.

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[9] The authority cited by the Bureau as support for its Proposal reinforces this conclusion. The Proposal cites Business and Professions Code section 19805 and for reference cites section 19826 and *Oliver*. Section 19805 does not define a "banking game." Rather, section 19805, subdivision (c) incorporates in materially indistinct language the safe harbor from Penal Code section 330.11; it too does not purport to define what a "[b]anking game" is. The definition of "[p]layer dealer" and a "controlled game featuring a player-dealer" in section 19805, subdivision (ag), also cannot support the regulation. This definition was adopted in AB 1416 at the same time as Penal Code section 330.11. The definition does no more than repeat or clarify application of the safe harbor; it is neither written nor intended as a substantive definition of a "banking game." Moreover, section 19805, subdivision (ag) refers to "player participants" having the opportunity to wager against multiple players and the player-dealer position being rotated to other seated players. Nowhere does that provision prohibit backline, combined or direct wagers by seated players; indeed, it refers to "participants" (plural) being able to temporarily wager in the player-dealer position. Finally, the definition of player-dealer in section 19805, subdivision (ag) is not incorporated as a limitation in section 19826, subdivision (g), which authorizes the Bureau to approve controlled games. Nowhere does the Gambling Control Act restrict game approvals to player-dealer games as defined in section 19805, subdivision (ag). And neither section 19826 nor any other law authorizes the Bureau to impose categorical, statewide prohibitions on approved games. (See *ante*, Part I.A.)

(3) Cardroom Player-Dealer Games Meet the Criteria Set Forth in Penal Code Section 330.11

Even if the Bureau were correct that section 330.11 states a requirement rather than a safe harbor, the Bureau still would have no lawful basis for this rulemaking effort because existing cardroom player-dealer games fit comfortably within the terms of that provision.

a. As an initial matter, it is uncontestable that cardroom player-dealer games "ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game." (Pen. Code, § 330.11.) And, as explained at length above, such games "preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game" (*ibid.*) through various means—including routine offers of the player-dealer position to all players and various mechanisms for shared wagers on the player-dealer position (see *ante*, Part II.B(1)). The only remaining question is whether cardroom player-dealer games "provide that [the player-dealer] position must be continuously and systematically rotated amongst each of the participants during the play of the game." (Pen. Code, § 330.11.) That requirement is consistent with the method of play in cardrooms. When the player-dealer position is offered around the table, it rotates continuously and systematically to all players. That some players may choose to decline the deal, rather than deal a hand (or two), does not erase the fact that the position itself rotated. At a minimum, Penal Code section 330.11 does not further define what it means for the "player-dealer position" to "rotate[]," and so the statute is most naturally interpreted in a manner consistent with the longstanding method of play in cardrooms. (Cf. *post*, Part II.D(2) [explaining that the rule of lenity requires ambiguous criminal statutes to be interpreted narrowly].)

b. Even if that categorical approval did not apply to cardroom player-dealer games, Penal Code section 330.11 further states that "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." (Pen. Code, § 330.11.) The Bureau has, for the last 25 years, been evaluating player-dealer games against the criteria set forth in section 330.11, and in approving them for play, the Bureau has at the very least found that cardroom games—with their full constellation of rules—"render the maintenance of or operation of a bank impossible." After all, the Bureau has consistently approved the cardroom player-dealer games played throughout the state today—games that almost never impose a requirement that any player accept the deal when it is offered. There is no reason, let alone a necessity (as the APA requires), to break

now from the Bureau's consistent practice of approving these so-called "offer-only" games. (See *post*, Part III.A.)

At a minimum, the Proposal's one-size-fits-all approach is flatly inconsistent with the Legislature's express acknowledgement that the Bureau can approve games that do not "mandate acceptance of the deal." (Pen. Code, § 330.11.) The Proposal requires that *all* player-dealer games adopt a single set of rules, which mandate acceptance of the deal multiple times within a 40-minute period. That is directly contrary to the statute, which states unequivocally that 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." (*Ibid.*) In other words, the Legislature acknowledged that the set of conditions it established for automatic safe harbor protection were not exhaustive, but only a safe harbor; there are sets of game rules that the Legislature had not specified or envisioned that would nevertheless be permissible. For decades, the Bureau has reviewed each individual application that has come before it, in apparent recognition that (at a minimum) the statute allows an applicant to persuade the Bureau that its set of rules render the maintenance of or operation of a bank impossible *without* mandating acceptance of the deal. The Proposal would shut down that process of individualized review and improperly render superfluous the Legislature's permission for game rules that do not impose such a mandate—in contravention of traditional rules of statutory construction. (See, e.g., *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22 ["We do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous."].)

c. Legislative history provides further support for the conclusion that cardroom player-dealer games are entirely consistent with section 330.11. Legislative history is an important factor in the event that the text of a statute does not conclusively resolve a question of statutory interpretation. (See *Dept. of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (2025) 17 Cal.5th 510, 520–521.) Here, legislative history shows in at least three ways that the Legislature never intended to prohibit offer-only player-dealer games when it enacted Penal Code section 330.11.

First, legislative history shows that AB 1416, which added section 330.11 to the Penal Code, was intended to reaffirm the legality of player-dealer games as they had been played in the 1980s and 1990s. For example, the legislative findings accompanying AB 1416 state:

> In 1983 and 1984 California card clubs played games with cards involving a player-dealer position in which players were afforded the

> temporary opportunity to wager against multiple players at the table where the player-dealer position continuously and systematically rotated among the players, prior to the amendment of Section 19 of Article IV of the California Constitution by the California State Lottery Act in 1984. This method of play was approved by the Courts of Appeal in [*Sullivan*, *Walker*, *Bell Gardens*, and *Huntington Park*].

(Legis. Counsel's Dig., Assem. Bill No. 1416 (1999–2000 Reg. Sess.), ch. 1023, § 1, subd. (a) as introduced Sept. 30, 2000, Stats. 2000, ch. 1023, § 1(a), pp. 7550-7551; see also Sen. Com. on Governmental Org., Staff Analysis of Assem. Bill No. 1416 (1999–2000 Reg. Sess.) as amended Apr. 4, 2000, p. 7 ["Supporters believe that AB 1416 will clarify the law as it has been understood by the industry for the previous nine years."].) The Legislature thus made clear that AB 1416 would codify the legality of player-dealer games as they had long been played, including the rotation rules approved by the Courts of Appeal in *Bell Gardens* and *Huntington Park*. The legislative findings did not cite *Oliver* or *Kelly*. The Bureau's rulemaking here is the exact opposite of reaffirming the legality of longstanding practice.

Second, the Legislature specifically rejected a statutory mandate that the player-dealer position must be accepted by a new participant after a specified number of hands. An early version of AB 1416 would have forbidden the approval of any game that enabled players to "occupy[] the player-dealer position for more than two consecutive hands." (See Legis. Counsel's Dig., Assem. Bill No. 1416 (1999–2000 Reg. Sess.), as amended Mar. 23, 2000, § 10, § 19834.7(e).) The Legislature rejected this two-hand requirement in favor of the current version of the statute. That decision is compelling evidence that the Legislature did *not* see frequency of acceptance of the player-dealer position as the defining feature of a legal player-dealer game, and thus it *declined* to make it a requirement in section 330.11.

Third, the original bill envisioning section 330.11 (AB 1417) expressly provided for offer-only rules. (See Legis. Counsel's Dig., Assem. Bill No.1417 (1999–2000 Reg. Sess.) (introduced Feb. 26, 1999), § 1 [proposing Bus. & Prof. Code, § 19834.7, subd. (c)(2)] ["[A] game is not a banking game merely because the rules of the game allow a player, who does not represent the interest of the house, to act as a bank, provided that this position is offered to all the players at the table after every five hands."].) The Governor vetoed AB 1417 because it did not regulate TPPPPS—not because of any concern regarding the bill's express authorization of offer-only rotation. (See Governor's veto message to Assem. on Assem. Bill No. 1417 (July 28, 1999) 3 Assem. J. (1999–2000 Reg. Sess.) p. 3169 ["I am asking the Legislature to insert a licensing and oversight procedure for persons or business

entities who would perform the functions of the bank. With these changes, I will sign the bill."].) This aspect of the legislative history shows that the Legislature understood that offering the player-dealer position to participants to accept at their option (without requiring anything of participants) to be consistent with the law, considering that the Legislature sought only to clarify the "banking" standard—not to redefine it.

D. The Bureau's Rulemaking Is Contrary to Important Interpretive Canons

There are at least two additional reasons why the Proposal lacks authority and consistency. First, the Proposal ignores the doctrine of legislative acquiescence, which strongly counsels against the novel view that player-dealer games must make fundamental changes to align with the law. Second, the Proposal fails to consider the important role of the rule of lenity in addressing the meaning of statutory provisions that carry criminal consequences.

(1) Legislative Acquiescence

Under the doctrine of legislative acquiescence, "[l]awmakers are presumed to be aware of long-standing administrative practice and, thus ... the failure to substantially modify a provision ... is a strong indication the administrative practice was consistent with underlying legislative intent." (*Cal. Renters Legal Advoc. & Ed. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 843 [quoting *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18–19]; see also *Cal. Highway Patrol v. Superior Court* (2006) 135 Cal.App.4th 488, 501, as modified on denial of reh. (Jan. 31, 2006) [explaining that a "legislative failure to modify a consistent and longstanding administrative interpretation, which the Legislature is presumed to know, may reflect legislative approval of the administrative interpretation"].)

That inference is especially compelling when the "Legislature has been very active" in a particular "area of the law." (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1015.) In that circumstance, the Legislature's decision not to disturb an administrative practice is "not just a matter of legislative inattention"; instead, it can be "presume[d]" that the Legislature "was aware of the administrative interpretation, which makes its acquiescence all the more significant." (*Ibid.*)

This doctrine fits the present circumstances hand-in-glove. As the Bureau knows, it has permitted so-called offer-only player-dealer games for decades. The Bureau's policy toward offer-only player-dealer games was reflected not only in a 2007 letter, but also in the Bureau's frequent and consistent game approvals. The 2007 letter and examples of the Bureau's game approvals are attached as support

for these comments. (See Exs. B & C.) At the same time, the Legislature has been very active in this area of law—including by enacting Penal Code section 330.11, placing TPPPPS under a comprehensive regulatory scheme, and most recently enacting SB 549.

Despite the Legislature's active involvement, it has never overruled the Bureau's longstanding approvals of player-dealer games, nor has the Legislature indicated any disagreement with the basic definition of a "banking game" that California courts have adopted. If the Legislature disagreed with the Bureau's approvals, it has had many years and many opportunities to directly address those approvals. Yet the Legislature has done precisely the opposite, leaving them intact at every opportunity. Under those circumstances—where the Legislature was undoubtedly "aware" of the Bureau's longstanding "administrative practice" of approving offer-only player-dealer games, and where the Legislature was "very active" in this "area of law"—there is a "strong" inference that the Legislature has acquiesced in the legality of these games, which should conclusively preclude the Bureau from now changing course. (*Sara M.*, *supra*, 36 Cal.4th at p. 1015.)

(2) Rule of Lenity

The rule of lenity requires that ambiguous criminal statutes be construed in the manner most favorable to the defendant. (*People ex rel. Green v. Grewal* (2016) 61 Cal.4th 544, 565.) Thus, "when two reasonable interpretations of a penal statute stand in relative equipoise," the appropriate course is to adopt the more lenient interpretation. (*Ibid.*) The rule of lenity serves two constitutional goals: (1) it "ensures that criminal statutes will provide fair warning concerning conduct rendered illegal;" and (2) it protects the separation of powers by recognizing that "legislatures" are responsible for "defin[ing] criminal activity." (*People v. Avery* (2002) 27 Cal.4th 49, 57 (*Avery*) [quotation marks omitted].)

The rule of lenity protects the cardrooms here. Although we believe cardroom player-dealer games are clearly lawful under Penal Code section 330, no one could fairly take the diametrically opposite view that they are clearly *un*lawful. Section 330 does not define "banking game," and from the beginning, some judges have worried that the courts overstepped by constructing their own definition of "banking game," rather than striking down section 330 as void for vagueness. (See, e.g., *Carroll*, *supra*, 80 Cal. at pp. 159–160 (McFarland, J., concurring) ["If the legislature desires to make the playing of 'a banking game' a crime, let it simply put into the statute what it means by that term."]; *Walker*, *supra*, 194 Cal.App.3d at p. 1305 (Newsom, P.J., dissenting).) Yet the Legislature has not provided any further statutory instruction about what type of games are included within the "banking game" prohibition. The multiple, independently legally significant distinctions

between cardroom player-dealer games and casino banking games (see *ante*, Part II.B) raise at least a substantial question whether the former constitute "banking" as the Legislature has understood that term.

The judicial construction of "banking game" as articulated by our Supreme Court in *HERE* also provides no clear basis to determine that offer-only player-dealer games violate the prohibition on banking games. As explained above, offer-only player dealer games have *none* (and certainly not *all*) of the hallmarks of a banking game, as defined by the courts. (See *ante*, Part II.B(2).) Likewise, even if *Oliver*'s expansive interpretation of the prohibition on banking games were reasonable, other, narrower interpretations of that prohibition are at least as reasonable—as similarly illustrated above.

In short, the worst that can be said of our view of section 330 is that it stands in equipoise with a view that offer-only player-dealer games are unlawful. If the Legislature wished to bring offer-only player-dealer games within the ambit of Penal Code section 330, the Legislature could do so expressly. Regulations cannot serve as a substitute for legislative clarity, given the Legislature's responsibility for "defin[ing] criminal activity." (*Avery*, *supra*, 27 Cal.4th at p. 57 [quotation marks omitted].) Until the Legislature provides such clarity, the rule of lenity instructs that the appropriate course is to adopt the more lenient interpretation of the statute that is readily available. (See *People v. Reyes* (2020) 56 Cal.App.5th 972, 989–990 [refusing a statutory interpretation that would require "speculation" as to whether the Legislature intended to criminalize the conduct at issue].)[10]

[10] It would make no difference if the Bureau purported to construe only the Business and Professions Code, and not the Penal Code. Penal Code section 330.11 uses materially indistinct language from the Business and Professions Code 19805, subdivision (c), and so the Bureau's interpretation would inevitably govern in both circumstances. As a result, the rule of lenity applies. (See *Leocal v. Ashcroft* (2004) 543 U.S. 1, 11, fn. 8 ["Because we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies."].)

III. The Proposed Regulations Suffer from Several Fundamental Flaws

A. The Proposal Ignores the Bureau's Longstanding Practice of Approving Cardroom Player-Dealer Games and the Substantial Reliance Interests of Cardrooms, Cardroom Employees, and California Communities

Any Bureau regulation must abide by the APA requirements of necessity and consistency. (See Gov. Code, § 11349.1.) In ensuring those requirements are satisfied, agencies must consider any prior interpretation or practice in the relevant area of law. For example, the Legislature has instructed that a proposed regulation should be disapproved if it "conflicts with an existing state regulation and the agency has not identified the manner in which the conflict may be resolved." (*Id.* § 11349.1, subd. (d)(4).)

Agencies also must consider any reliance interests that have arisen as a result of its prior interpretation or practice. Our Supreme Court has long recognized that "[w]hen an administrative interpretation is ... long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation." (*Whitcomb Hotel, Inc. v. Cal. Employment Com.* (1944) 24 Cal.2d 753, 757.) It would therefore be procedurally and substantively erroneous for an agency to engage in rulemaking without considering those reliance interests and ensuring that its new regulations are "necessary," despite the weight of the reliance interests on the other side of the balance.

Here, the Proposal does not reflect due consideration for the Bureau's longstanding practice of approving offer-only player dealer games. The Proposal does not reconcile the proposed regulations with that practice. And the Proposal nowhere examines the substantial reliance interests created by the Bureau's past approvals. Nowhere does the Proposal acknowledge the Bureau's prior analysis or explain why it is appropriate to depart from that analysis, rather than adopt regulations consistent with it.

As explained above, there is a long history of California cardrooms hosting player-dealer games in which each player was given the *opportunity* to act as player-dealer but accepting that position was not required. For example, those games were played in the State in the 1980s and 1990s, leading to the court decisions discussed above. The Bureau approved offer-only player-dealer games after *Oliver*, after *Kelly*, after *HERE*, and after the Legislature enacted Penal Code section 330.11. If any of those events had been a reason to change a longstanding interpretation, the time to change course was decades ago, not today. Instead, the

Bureau's consistent policy of approving such games was stated expressly in a 2007 letter (Ex. C), and that policy has been followed as a matter of consistent actual practice. Indeed, at least as recently as 2016—again, long after any legislative or judicial development in this area—the Bureau stated that the 2007 letter set forth the Bureau's "inspection practice." (*Notification Regarding Rules of Games Featuring Player-Dealer Position* (Feb. 19, 2016), at p. 2 [attached as Exhibit D].) And even after the Bureau purported to suspend its 2007 letter (see *ibid.*), the Bureau *continued* to approve offer-only player-dealer games. Examples of such approvals are attached to these comments. (See Ex. B.)

A review of an application by the Bureau often includes an exchange of correspondence between the agency and the applicant regarding the play of the game, ensuring that the Bureau has a clear understanding of the rules that it may approve. Gaming analysts further abide by consistent standards when they evaluate applications for approval of a set of game rules. Yet the Proposal does not identify the standards that its gaming analysts have used, much less explain why the Bureau now views those standards as erroneous. The absence of such material in the Proposal prejudices the ability of industry participants and the public to understand and comment on the Proposal.

The consistent practice of approving offer-only player-dealer games has created immense reliance interests. The ability to offer these popular games is key to the economic success of cardrooms and the people and communities who depend on them. A 2019 study showed that cardrooms are responsible for over 32,000 jobs across the State, including for nearly 18,000 individuals employed directly by cardrooms. (See John Dunham & Associates, The Cardroom Industry Economic Impact Study (Oct. 28, 2019), at pp. 2–3 <https://gaming.guerrillaeconomics.net/res/Methodology.pdf>.) To put that into perspective, cardrooms employed "almost as many people as every museum, historical site, zoo and park in California combined." (*Ibid.*) The jobs produced by cardrooms provide living wages to tens of thousands of Californians; indeed, total wages paid to the individuals employed because of cardrooms exceeded $1.6 billion in the study year. (See *ibid.*) Local communities also depend on the success of cardrooms, which (in the study year) paid over $100 million in gaming city taxes and nearly $400 million in state and local business taxes. (See *ibid.*) Cardrooms also were associated with almost $5.6 billion in economic impact throughout the State. (See *ibid.*)

The combination of the Bureau's consistent practice and the immense reliance interests it has engendered mean that the Proposal's goal of shutting down those games does not comport with the APA. The Bureau would violate the requirement of "consistency" by jettisoning its prior interpretation and practice of

approving offer-only player-dealer games. *No new court decision, new statute, or any other changed circumstance justifies an interpretive u-turn today.* The Proposal's lack of "harmony" with past practice is exacerbated by the Proposal's failure to acknowledge or explain why a departure from past practice is warranted—a basic tenet of reasoned administrative decision-making. The Proposal compounds those errors by ignoring the reliance interests that the Bureau itself has created—including for California cardrooms, which have made substantial investments based on the Bureau's longstanding practice of approving its core games, and California workers and California communities that depend on cardroom success—and failing to provide a sufficient basis to conclude that the proposed regulations are necessary despite those interests. For these reasons, the Proposal does not comport with the APA.

B. The Proposal Fails to Show that Rulemaking to Restrict Player-Dealer Games Is Necessary

The Proposal fails the APA standard for necessity in other ways. "'Necessity' means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record." (Gov. Code, § 11349, subd. (a).) The Proposal does not provide substantial evidence—or, indeed, any evidence—to support the "need" for the proposed regulations, either in gross (as discussed immediately below) or in their particulars (see *post*, Part IV).

As an initial matter, the Proposal never says why, after the Bureau approved offer-only player-dealer games for decades, those same games must now be restricted. The Proposal gestures at a basis in law, but it actually points to *zero* changes in the law since the Bureau's last approval that might justify an about-face. The Proposal likewise cites no changes in the relevant facts as justification. The Proposal summarily claims that it would "protect[] the public health, safety, and welfare." (ISR at p. 4.) But the Proposal cites no evidence in support of this claim. It does not point to complaints from cardroom patrons about offer-only games, or anything else that would suggest a link between offer-only player-dealer games and a threat to health, safety, or welfare. Absent from the Proposal are any "facts, studies, [or] expert opinion" that might meet the threshold of substantial evidence. (Gov. Code, § 11349, subd. (a); see also *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424 ["'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.... 'Inferences may constitute substantial evidence, but they must be the product of logic and

reason. Speculation or conjecture alone is not substantial evidence.'"] [citations omitted].)

The Proposal does not, for example, explain why offer-only player-dealer games might produce some sort of social ill, and why mandatory acceptance of the deal would solve it. The Proposal does not state *who* the proposed regulations would protect, but assuming the Proposal is aimed at protecting cardroom patrons, it is especially illogical: No reason exists to believe that cardroom patrons would *prefer* games that *require* acceptance of the player-dealer position, because under games currently played, those same patrons *can already choose for themselves* whether to accept or decline the player-dealer position. By contrast, if a cardroom patron never wants to occupy the player-dealer position (as those who prefer more control over the play of their hands might), that patron can choose to refrain from accepting the player-dealer position, just as they can choose for themselves how much to bet, what rule options to exercise, and so on. Mandating acceptance of the player-dealer position can only *prevent* cardroom patrons from controlling their own experience, directly undermining the public welfare and the ability of patrons to enjoy their gaming experience. No social ill is addressed by forcing cardroom patrons to occupy a position against their will as a condition of continuing to play a game they enjoy. The same is true of other aspects of the Proposal, including required offers after every hand (rather than every two), a 40-minute game limit, and required acceptance by *two* non-TPPPPS players—none of which is supported by evidence, and none of which promotes a positive gaming experience.

On the other side of the balance, the Proposal is likely to create substantial, new problems for the "public health, safety, and welfare"—none of which the Proposal even acknowledges. Although the Proposal asserts that it would have the benefits of "reduced crime, problem gambling, etc." (though those benefits are not estimated due to "data insufficiency") (Economic and Fiscal Impact Statement (EIS) at p. 2), in fact the opposite is true. Severe restrictions on cardroom gaming will divert gaming away from licensed, well-supervised cardrooms that the Bureau can inspect and monitor, and toward unrestricted, underground establishments that are far more difficult to police and tend to breed a variety of social ills. The Bureau's own economic analysis finds that the Proposal would "likely change gaming dramatically and it [would be] expected that about half of players [would] leave cardrooms." (SRIA at p. 20.)[11] Many of those players will *not* go to tribal casinos (which are themselves beyond the Bureau's ability to supervise), considering the "relatively remote nature of the tribal alternatives." (*Ibid.*) Patrons will instead go

[11] As explained below, this analysis actually understates the effects of the Bureau's Proposal. (See *post*, Part V.)

underground, to illegal gambling establishments that offer the games they want at a convenient location. Indeed, before player-dealer games were offered in well-controlled establishments, would-be cardroom patrons frequented illegal gambling parlors run by criminal groups. (See Sen. Com. on Judiciary, Analysis of Sen. Bill No. 151 (1969 Reg. Sess.) April 12, 1968, p. 2, L.A. Police Dept. Rep. to Legis., State Chartered Social Clubs.) The prevalence of unlawful gambling, with its immense attendant dangers, remains a significant concern today in the State.[12] Local governments would thus be harmed twice over by the Proposal—first, by cutting a significant source of tax revenue, and second, by forcing new investments in public safety to address the immediate effects of the Proposal. The Bureau should be steering Californians *away* from dangerous, illegal gambling parlors, and toward regulated, licensed gaming establishments. Yet the Proposal does precisely the opposite, without any adequate consideration of the issue or any showing that it is necessary for the Bureau to visit the consequences on California communities.

C. The Proposed Regulations Unreasonably and Illogically Single Out TPPPPS Players for Disfavored Treatment

One clear theme of the Proposal is an intent to restrict activities of third-party providers of proposition player services. Throughout, the Proposal singles out TPPPPS for disfavored treatment, a striking break from the longstanding practice that all participants at a table are treated equally and must play by the same rules.

In particular, the Proposal would require acceptance of the player-dealer position by at least two players "other than the TPPPPS" every 40 minutes. (Proposed § 2076, subd. (a)(4).) The Proposal would provide that, if "the player-dealer position is occupied by a TPPPPS," then "the next person in the rotation of the player-dealer position shall not be the TPPPPS." (*Id.*, subd. (a)(7).) The Proposal would disallow "any person to place a wager directly against the TPPPPS when the TPPPPS is not occupying the player-dealer position." (*Id.*, subd. (b)(1).) It would also disallow a TPPPPS to "settle any wagers at the table when they are not occupying the player-dealer position." (*Id.*, subd. (b)(2).) And the Proposal would provide that "[n]o more than one [TPPPPS] shall be permitted to offer services at a table where a game that features a rotating player-dealer position is being offered

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[12] (See, e.g., Aydian Ahman, *CHP Shuts Down Northern California Illegal Gambling Operation, Recovers Nearly $80,000*, Fox40.com (Aug. 31, 2024); Travis Schlepp, *Police Break Up Illegal Gambling Operation in Backyard of San Bernardino Home*, KTLA5 (Jul. 15, 2024); *SF Neighborhood Businesses Raided in Connection with Illegal Gambling*, SFGate (Sept. 13, 2024); Daniel Gligich, *Police Bust Illegal Casino in Southeast Fresno*, The Sun (Sept. 19, 2024).)

for play." (*Id.*, subd. (c).) These provisions targeting TPPPPS create two fundamental problems for the rulemaking.

(1) The Proposal Is Inconsistent with the Legislature's Authorization and Comprehensive Regulation of TPPPPS

First, these provisions are inconsistent with the Legislature's express authorization and comprehensive regulation of TPPPPS. When the Legislature enacted the safe harbor for rotating player-dealer games, it also enacted legislation approving and regulating TPPPPS's ability to participate in cardroom games. Section 19984 of the Business and Professions Code provides that a cardroom "may contract with a third party for the purpose of providing proposition player services at a gambling establishment," subject to certain conditions. TPPPPS must obtain operating licenses from the Commission, and any contracts between TPPPPS and cardrooms must be individually approved in advance by the Bureau. (See Bus. & Prof. Code, § 19984, subds. (a), (b).) Section 19984 gives the Commission significant authority to regulate TPPPPS activity, and it empowers the Bureau "to perform background checks, financial audits, and other investigatory services as needed to assist the commission in regulating [TPPPPS]." (*Id.*, subd. (c).)

But deliberately absent from this comprehensive regulatory scheme is any authority to restrict the manner in which a TPPPPS participates in a player-dealer game. Indeed, the statute identifies just one specific restriction *of any kind*, and it relates to contracts between cardrooms and TPPPPS: "[I]n no event shall a gambling enterprise or the house have any interest, whether direct or indirect, in funds wagered, lost, or won." (Bus. & Prof. Code, § 19984, subd. (a).) That requirement exists to conform with the California Constitution's anti-casino provision. The legislative findings prefacing section 19984 explain: "In Nevada and New Jersey, comparable games are banked only by the house, which is a participant in the game, with an interest in its outcome, and which covers all bets in the game, paying all winners and collecting from all losers." (Stats. 2000, ch. 1023, § 1(b), p. 7551.) The Legislature thus considered the potential for TPPPPS to contribute to banking and it decided to address that issue with the specific restriction it included in the statute. The Proposal flouts the Legislature's intent and exceeds the Bureau's authority by imposing *additional* restrictions not provided or envisioned in the regulatory scheme the Legislature carefully crafted for TPPPPS. (See *Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 ["A recognized rule of statutory construction is that the expression of certain things in a statute necessarily involves exclusion of other things not expressed—Expressio unius est exclusio alterius."].)

There are especially good reasons for the Legislature to have preferred its approach to the one in the Proposal. Under the Legislature's approach, regulated and licensed TPPPPS players may freely and lawfully participate in player-dealer games, subject to the specific restriction cited above, but otherwise on identical footing with other participants in the game. The Proposal's approach, by contrast, imposes particular restrictions on TPPPPS that discriminate among game participants and discourage TPPPPS participation in player-dealer games. That approach arbitrarily disfavors TPPPPS participants, and it tends to encourage more *unlicensed*, *unregulated* players entering player-dealer games to fill any void left by artificial limitations on TPPPPS participation. The Legislature deliberately chose a different, superior course—of permitting TPPPPS participation, putting TPPPPS on equal footing with other participants, and bringing TPPPPS within an appropriate regulatory structure.

(2) The Proposal's TPPPPS Provisions Do Not Advance the Bureau's Stated Purpose of Enforcing the Prohibition on Banking

Second, the Proposal's TPPPPS provisions are at odds with "effectuat[ing] the purpose" the Proposal purports to serve (Gov. Code, § 11349, subd. (a)), because those provisions do not advance the stated purpose of "better enforc[ing] the prohibition on banking games" (ISR at p. 4; see also *ibid.* [explaining that the intended purpose of this regulatory effort is to "prevent the maintenance or operation of a bank"]).

Consider, for example, proposed section 2076, subdivision (a)(4), which requires rotation every 40 minutes to "at least two players other than the TPPPPS" (or to one player other than the TPPPPS twice if there is only one player other than the TPPPPS at the table). There is no basis in law or logic to exclude the TPPPPS in considering whether acceptance of the player-dealer position has occurred. Neither Penal Code section 330 nor Penal Code section 330.11 can possibly be read to turn on whether an action is taken by a TPPPPS or a non-TPPPPS participant. Rather, the safe harbor under section 330.11 states only that, to meet the safe harbor, the player-dealer position would need to be rotated among "the participants" in the game, which necessarily include TPPPPS and non-TPPPPS participants alike. Nor is there any reason why non-TPPPPS acceptance of the deal should be the only way to ensure that a game is not banked. As addressed above, player-dealer games provide abundant other mechanisms to ensure that banking does not occur. (See *ante*, Part II.B.)

Proposed section 2076, subdivision (b) is even more problematic. That provision appears to prohibit a TPPPPS from placing backline wagers, combined

wagers, or direct bets when not in the player-dealer position. As already explained (see *ante*, Part II.B), those types of wagers diversify the action in a manner inconsistent with banking, because they conclusively defeat even the possibility of the game being "the one against the many," by featuring multiple players wagering on the player-dealer position and against the other players seated at the table. Yet the Bureau's Proposal would only make it *less* likely for a game to feature such wagers, because the Proposal would preclude some participants *(i.e.*, a TPPPPS) from placing such wagers. In that way, the Proposal forecloses the very conduct it should promote. The Proposal asserts that section 2076, subdivision (b)(1) is "necessary to implement Business and Professions Code section 19805, subdivision (ag)." (ISR at p. 7.) We do not understand that assertion: That subdivision defines a "player-dealer" and "controlled game featuring a player-dealer position" as "a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game." Even setting aside that this is a definition—not a requirement that needs to be "implemented"—it says nothing at all about the propriety or impropriety of shared wagers on the player-dealer position. This restriction appears only to have the effect of making the game less appealing to participants; it does nothing to prevent the maintenance or operation of a bank. The Proposal fails to explain the connection between subdivision (ag) and the proposed restriction.

The Proposal's restrictions on TPPPPS participation in shared wagers is also likely to lead to *less* acceptance of the player-dealer position, again contrary to the Proposal's stated goal. (See ISR at p. 7 [stating that the purpose of subdivision (b)(2) is to "ensure that the player-dealer position is rotated among the players in a continuous and systematic manner"].) In particular, there may be occasions when a non-TPPPPS player would want to take the player-dealer position, but feels concern that other players at the table would prefer to have wagers in the player-dealer position that would cover more or all of the action at the table. In that circumstance, a TPPPPS backline or combined wager can solve the problem by covering amounts that the non-TPPPPS player-dealer does not wish to wager. In that way, TPPPPS participation in a shared wager can have the natural effect of encouraging acceptance of the player-dealer position by removing a possible reason that some participants may choose not to accept that position. The Proposal would eliminate this option, directly undermining any effort to encourage more acceptance.

Proposed section 2076, subdivision (c) is likewise at odds with the Bureau's stated goal. That provision would prohibit more than one TPPPPS from

participating in play at a given table in a player-dealer game. Here too, the Bureau's Proposal makes acceptance of the player-dealer position *less* likely, not more so. Assuming that TPPPPS participants will typically accept the player-dealer position when offered, a game with multiple TPPPPS participants would typically involve frequent acceptance—indeed, after every two hands. It would be impossible to describe such a game as lacking "continuous[] and systematic[]" rotation. (Pen. Code, § 330.11.) But the Proposal makes that type of game categorically *un*lawful—again, in direct conflict with the Bureau's stated purpose of promoting acceptance of the player-dealer position by more participants.

Finally, and most fundamentally, the Proposal does not explain why it serves the stated interest in preventing banking to single out TPPPPS players for different treatment and more restrictive rules of game play. The fact that TPPPPS are licensed and regulated does not make them more likely to present a banking problem. The Proposal fails to consider that a participant with the same financial strength and risk tolerance of a TPPPPS participant could come to a cardroom and play in precisely the same way as a TPPPPS participant, only without licensure and regulation, and would not be subject to any of the specialized restrictions that the Proposal would impose on TPPPPS. That is irrational, yet it is precisely the line that the Proposal draws.[13]

D. The Proposal Fails to Consider Reasonable, Preferable Alternatives

"The ISR must include a description of 'reasonable alternatives to the regulation' and the agency's reasons for rejecting them." (Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2024) ch. 23-G, ¶ 23:290 [quoting Gov. Code, § 11346.2, subd. (b)(4)(A)].) That must include a "description of reasonable alternatives to the regulation that would lessen any adverse impact on

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[13] To the extent the Bureau bases its TPPPPS-specific restrictions on the financial resources of TPPPPS players, that is error. The initial version of Penal Code section 330.11 (AB 1416) defined a banking game by reference to whether the resources of one player dwarf that of the others. The Attorney General responded by writing a letter to the Governor, objecting that the newly enacted banking definition "incorrectly suggests that the character of a game as a 'banking game' is dependent on the size of the bank in comparison with the resources of the other participants." The next year, the Legislature passed clean-up legislation (AB 54), which deleted the offending language from section 330.11. The statute as currently written thus reflects the Legislature's intent that differences in the size of players' funds should *not* factor into any "banking" determination.

small business and the agency's reasons for rejecting those alternatives." (*Id.* ¶ 23:293 [quoting Gov. Code, § 11346.2, subd. (b)(4)(B)].)

Here, the Proposal addresses two alternatives. *First*, it discusses "an alternative rule with respect to the timing of the rotation of the player-dealer position," which "included requiring rotation of the player-dealer position after every hand, or after every two hands." (ISR at p. 9.) *Second*, it discusses "an alternative rule with respect to the consequences for failing to rotate the player-dealer position," which "would have required that the play of the game stop for a specified period of time before play could resume in the event that the player-dealer position did not rotate as required by the regulation." (*Id.* at p. 10.) The Bureau does not explain the precise contours of this alternative, though it acknowledges that it was "deemed to be too punitive" relative to the Proposal. (*Ibid.*) In other words, the Proposal reflects consideration only of alternatives that would be *more* burdensome on cardrooms and other small businesses that depend on them, not less so, despite the Legislature's instruction that the Bureau describe alternatives that "*lessen* any adverse impact on small business." (Gov. Code, § 11346.2, subd. (b)(4)(B).)[14]

Numerous alternatives would be less burdensome or otherwise preferable to the Proposal. The Proposal's failure to consider any of them is error.

(1) Codify the Bureau's Longstanding Approach of Approving Offer-Only Player-Dealer Games

First, instead of proceeding with the Proposal, the Bureau could codify its longstanding practice of approving offer-only player-dealer games as they are currently played and approved in the State. Doing so would have significant benefits. It would be consistent with governing statutes and the prevailing case law. (See *ante*, Parts II.A, II.B, II.C.) It would be consistent with the Legislature's acquiescence in the Bureau's longstanding approach, as well as the rule of lenity. (See *ante*, Part II.D.) It would take account of the immense reliance interests that

[14] The SRIA models two alternatives, but neither is addressed in the Initial Statement of Reasons. The first alternative would provide a "three-year extension of the deadline for full compliance" with the Proposal. (SRIA at p. 39.) That alternative is marginally better than the Proposal, but ultimately still suffers from the same fundamental flaws identified in these comments. The second alternative would "assume that cardroom gaming is prohibited for all categories of play." (*Ibid.*) That is obviously unlawful, and even the BEAR Report acknowledges that it is "completely hypothetical and in no way reflects policy intention." (*Ibid.*)

have developed as a result of the Bureau's practice. (See *ante*, Part III.A.) For those same reasons, doing so would be wholly resistant to any legal challenge. And literally every word that the Bureau says about the anticipated benefits from its proposed regulatory action would still be true—including that the Bureau would provide "clear rules and standards for what game rules are required," providing "notice" to the regulated industry and ensuring "consistent and fair evaluation of controlled games." (ISR at p. 4.) The ISR's entire section on anticipated benefits warrants reprinting, as it is striking that every sentence would fit this most obvious (yet unaddressed) alternative.

> The proposed regulations will have the benefit of codifying standards for Bureau review of controlled games featuring a player-dealer position. This will assist the regulated industry and the public to avoid engaging in unlawful gambling activities, thereby protecting the public health, safety, and welfare. The proposed regulations will provide clear rules and standards for what game rules are required in controlled games that feature a rotating player-dealer position. This has the additional benefit of putting the regulated industry on notice of what game rules will not be approved, thereby avoiding wasted time or resources in submitting applications.
>
> The regulations will also provide the benefit of consistent and fair evaluations of controlled games featuring a player-dealer position by using a known and established set of standards. Without regulations, individual game disapprovals would result in litigation for each and every game that would otherwise be disapproved as an illegal banking game, and so the regulations would provide additional transparency and fairness. And, in order to ensure that "permissible gambling will not endanger public health, safety, or welfare" (Bus. & Prof. Code, § 19801, subd. (g)), the regulated industry and the public will, via the proposed regulations, be more fully informed of the standards that the Bureau applies to the games it approves or disapproves, as well as clarity as to what games are allowed to be played in California gambling establishments.

(ISR at p. 4.)

(2) Focus on Ensuring that Offers Are Appropriately Made and Can Be Freely Accepted

Second, instead of proceeding with the Proposal, the Bureau could focus its regulatory effort on ensuring that offers of the player-dealer position are

appropriately made and can be freely accepted by any seated participant in the game.

As explained above, cardroom player-dealer games generally provide that offers of the player-dealer position must be made after every two hands. That rule ensures that cardroom player-dealer games are not prohibited banking games, because mandatory offers prevent any player from controlling the player-dealer position for himself or herself against the will of the other players. (See *ante*, Part II.B [explaining why this aspect of cardroom player-dealer games means that such games fall outside the judicially accepted definition of "banking"].)

The Bureau could have emphasized the importance of that aspect of cardroom player-dealer games and issued informal guidance or established prophylactic rules intended to ensure that offers are appropriately made. For example, the Bureau could have limited its rulemaking effort to provisions similar to those specified in proposed section 2076, subdivisions (a)(2)-(3), which require certain written notices, as well as verbal and physical offers of the player-dealer position. Although we think that those aspects of the Proposal are likely unnecessary because there are already ample protections in place at cardrooms across the State, the Bureau could reasonably seek uniformity and facilitate inspections by establishing such rules.

(3) Identify Less Restrictive Rotation Rules and Evaluate Whether They Are Appropriate

Third, even if the Bureau disagreed with all the fundamental objections to this rulemaking expressed above, the Bureau could still adopt (and is required by Government Code section 11346.2, subdivision (b)(4) to consider) rotation regulations that are substantially less restrictive than the ones in the Proposal.

Most obviously, the Proposal does not address the guidelines the Bureau pursued in 2016. Those unadopted guidelines stated that the Bureau would deny approval to game rules unless they provided for all of the following:

> 1. Provide for an offer of the player-dealer position to each player seated at the table immediately upon completion of every second consecutive hand, or more frequently if desired. The offer must be clearly visible to surveillance cameras and audible, so that each player at the table is aware of the opportunity made available by the offer.
>
> 2. Provide that no one person or entity may hold or otherwise be involved in the player-dealer position continuously for 60 minutes. The player-dealer position must rotate completely away from a person

> or entity within a 60-minute period, to a different person or entity from the one who occupied the position during the hand immediately preceding the rotation. The 60-minute period commences upon acceptance of the player-dealer position.
>
> 3. Provide that upon failure of fulfillment of any of the requirements of play identified in paragraph 2, the game must end, and that a new game cannot begin for at least two minutes.
>
> 4. Provide for immediate notification to all players that the game has ended, cards or tiles cannot be dealt, and wagers cannot be made. The dealer tray must be covered during this time to indicate the game has ended.
>
> 5. Provide for the shuffling of all cards or tiles upon the opening of a new game.

(Notification Regarding Rules of Games Featuring Player-Dealer Position (June 30, 2016), pp. 1–2 [attached as Exhibit D].)

Those guidelines ultimately failed because the Bureau failed to comply with the rulemaking process. In particular, the Office of Administrative Law ("OAL") ruled that they were an improper underground regulation. (See 2017 OAL Determination No. 2, OAL Matter No. CTU2017-0112-01 (Jul. 24, 2017).) That ruling does not address the substance of the 2016 guidelines, which were the result of informal meetings with various stakeholders. Yet the Bureau has evidently not considered returning to the approach it attempted in 2016—determining instead, and without the explanation that the APA requires, to propose objectively more restrictive regulations.

To be clear, the Bureau cannot and should not promulgate rules that mirror the 2016 guidelines for many of the reasons articulated above. There is no basis in fact or law to require changes to player-dealer games as they are currently played, because those games comport with the governing law and have been approved by the Bureau for decades. (See *ante*, Part II.) Accordingly, regulations that are more restrictive than the Bureau's current approval practice are neither required nor appropriate. And it would be impermissible, for reasons already explained, for the Bureau to withdraw approval of approved games simply because they do not meet the standards suggested in 2016, or any other standards the Bureau may promulgate in the future, because such action far exceeds the Bureau's limited role under the GCA. (See *ante*, Part I.A.)

But even if the Bureau disagrees with all of that and determines that player-dealer games must mandate acceptance of the player-dealer position, the Bureau could at least advance its interest in ensuring that such acceptance occurs in a less burdensome manner, relative to the current Proposal, by instead proposing a return to the 2016 guidelines, or any number of variations of those guidelines. The Proposal never explains why it rejected the 2016 guidelines in favor of the Proposal, which is more restrictive in several respects.

For example, the 2016 guidelines provide for offers of the player-dealer position after every two hands, in line with industry practice—rather than every hand. They are also keyed to acceptance of the player-dealer position by at least *two* participants every *60* minutes—rather than at least *three* participants every *40* minutes. In addition, in 2016, the Bureau stated that using a standard time on each hour would be easier for Bureau enforcement staff to monitor and enforce. Although ease of enforcement does not make a regulation lawful, and a 60-minute requirement is still unnecessary and inconsistent with law (see *ante*, Part II), the Bureau must at least explain why it has chosen a more-difficult-to-administer 40-minute threshold in this Proposal.

The 2016 guidelines would also provide more clarity than the Proposal on what happens when acceptance of the player-dealer position does not occur. The 2016 guidelines would have provided an express requirement to cease gameplay for two minutes—rather than an amorphous requirement to "end" or "stop" the game, and a harsh mandate that game play not begin again until a new player accepts the player-dealer position (no matter how long that takes to occur). And the 2016 guidelines do not provide for any specialized rules targeting TPPPPS participants—as compared to the Proposal, which would impose a set of rules that make acceptance of the player-dealer position *less* likely by *preventing* TPPPPS players from sharing wagers on the player-dealer position.

In all these ways, as between the Proposal and the 2016 guidelines, the latter would be substantially less burdensome and yet would have all of the benefits that the Proposal asserts.

Beyond the 60-minute limit suggested in the 2016 guidelines, there are still other limits that would be superior to the 40-minute limit selected in the Proposal. For example, the Bureau could tie a rotation rule to the completion of a dealer shoe (which contains multiple decks shuffled together). That rule would at least match the rulemaking to the more natural play and stoppage of the game. It would also normalize game outcomes over the course of play if a single participant occupied the player-dealer position for the entire shoe. And it would reduce the arbitrary variation of the Proposal across different types of games—some of which average a

relatively small number of hands every 40 (or 60) minutes, and others of which average a relatively large number of hands every 40 (or 60) minutes. A rule tied to a dealer-shoe would allow a roughly similar number of hands to be played prior to any forced acceptance of the player-dealer position, no matter the particular game.

Ultimately, because the Bureau itself pursued the 2016 guidelines, the Bureau must now explain why the substantially greater burdens imposed by the current Proposal are warranted. The Proposal's failure to consider the 2016 guidelines and explain why they should not be adopted is a plain violation of the rules governing this administrative process. (See Gov. Code, § 11346.2, subd. (b)(4)(A).) If and when the Bureau offers that explanation, the Bureau should allow for further comments with respect to that explanation.

IV. Section-by-Section Analysis of the Proposed Regulations

The Proposed Regulations do not meet the standards for adoption under the APA. They lack the authority, necessity, clarity, and consistency that the Legislature demands. At a minimum, the Bureau would need to substantially revise its Proposal to avoid serious obstacles to rational enforcement. We go through the Proposal section-by-section below.

A. Section 2076(a)

For the reasons explained in Part I.A above, the Bureau lacks authority to specify what a player-dealer game "shall" include in its rules. For the reasons explained in Part II, this entire rulemaking effort is inconsistent with governing law. For the reasons explained in Part III, this entire rulemaking lacks necessity and consistency, and otherwise fails to meet APA standards for adoption.

(1) Section 2076(a)(1)

This provision states that the player-dealer position may only be occupied by "a person" seated at the table. To the extent the singular "person" is intended to prohibit backline, shared, or direct wagers, we strongly object. As explained above, those wagers *defeat* any possibility of banking because they divide action on the player-dealer position and thus ensure that no one player takes on all comers, pays all winners, and collects from all losers. To the extent the Bureau did not intend this construction, it should say so expressly, consistent with the APA requirement of clarity. Regardless, requiring that player-dealers be seated at the table is unnecessary.

Requiring offers of the player-dealer position before every hand (as opposed to every second hand) is substantially more burdensome than necessary and is unsupported by any judicial decision or other source of law. That requirement would needlessly disturb a regular industry practice without any attendant benefits, as there is no plausible argument that a game becomes "banked" simply because offers are made every two hands rather than every hand. In addition, this requirement is inconsistent with game approvals and related court decisions across decades. Indeed, California courts have repeatedly considered games where the practice was to offer the opportunity to be player-dealer every two hands. (See, e.g., *Bell Gardens*, *supra*, 231 Cal.App.3d at p. 1566 [upholding a game in which each player had the opportunity to act as dealer for "two consecutive rounds"].) Even *Oliver* does not support an offer-every-hand requirement. (See *ante*, Part II.C(3).) Under those circumstances, there is no authority, consistency, or necessity for the Bureau to impose an "every hand" requirement. The "every hand" requirement is also inconsistent with the purpose of the Proposal. It would not only slow down the game (and, thus, the acceptance of the player-dealer position by various participants), but it could discourage some participants from accepting the player-dealer position because occupying that position for two consecutive hands may enable the participant to even out her odds.

(2) Section 2076(a)(2)

The cardroom industry strongly supports efforts to ensure that players are aware of the rules of the game, including for the purpose of ensuring that all players know they can exercise the option to take the player-dealer position freely if they so desire. A new regulatory requirement that cardrooms must provide a written notice at each table is unnecessary because cardrooms already provide substantial notice to participants that any player can accept the player-dealer position when offered, and that players cannot win or lose more than the amount they wager. We do not object, however, to the substance of the proposed notice, which is a correct statement of player-dealer game rules.

(3) Section 2076(a)(3)

No legal authority requires that offers of the player-dealer position be made in a particular way or before every hand. Requiring a verbal and physical offer after "every hand" fails for the same reasons as stated with respect to section 2076(a)(1). Requiring a verbal and physical offer at all is unnecessary because cardrooms already ensure that patrons are aware that they may accept the player-dealer position after every two hands. This rule also lacks clarity because it is not clear whether a separate verbal offer must be made to each player at the table. If the rules impose such a requirement, they are substantially more burdensome than

necessary. Asking the same question up to eight times after every hand would serve no purpose other than to annoy players and greatly slow down the pace of the game. The Bureau could accomplish the valid purpose of ensuring genuine and clear offers by requiring one verbal indication that offers are being made, along with a physical motion to indicate individual offers around the table. If the Bureau proceeds with a provision like this one, we recommend that the Bureau consider a more practical but equally functional alternative, which would require offers at least once every two or more hands, to be made with a verbal announcement and a distinct, physical motion with an arm extended holding the dealer button that crosses in front of each seated player's position and is visible to at least one surveillance camera.

(4) Section 2076(a)(4)

This provision fails the requirements of authority, necessity, clarity, and consistency. There is no basis in law for the Bureau to require acceptance of the player-dealer position by at least two players every 40 minutes, or to one player twice every 40 minutes. Those requirements appear to be based on a misapprehension about player-dealer games and errors of law, as described in Part II above. That is especially clear considering that the Proposal justifies this provision by stating that it is "necessary to ensure that the game does not fall within the definition of a banking game or banked game under [Pen. Code, § 330.11]." (ISR at p. 6.) As explained, Penal Code section 330.11 is expressly a safe harbor. (See *ante*, Part II.C(2).) There is no need for the Bureau to adopt a provision for the purpose of ensuring that an otherwise lawful game also meets a statutory safe harbor. There is also no basis in law or reason, nor any necessity, for the Bureau to single out TPPPPS players for disfavored treatment, as explained above. (See *ante*, Part III.C.) This provision is also more burdensome than necessary and inconsistent with governing law because there is no sound reason why acceptance of the player-dealer position by two non-TPPPPS players should be the only way to address a concern about banking. Cardroom player-dealer games provide several wagering mechanisms that are fundamentally inconsistent with banking—including backline wagers on the player-dealer position, combined wagers with the player-dealer, and direct bets. (See *ante*, Part II.B.) The Proposal does not explain why acceptance of the player-dealer position by non-TPPPPS participants is the sole means of curing a purported banking issue.

The requirements in subdivision (a)(4) are also arbitrary and more burdensome than necessary to further any interest in preventing banking. The Proposal offers inadequate reasoning for a two-player minimum and a 40-minute maximum, especially in contrast to the Bureau's prior guidelines that had specified

a one-player minimum and a 60-minute maximum. To the extent the Proposal would aim at preventing a single player from occupying the player-dealer position for an indeterminate period of time, then acceptance of the player-dealer position by *one* other player at the table would suffice. No statute or court decision has ever indicated that acceptance of the player-dealer position must be among *three* players (including, indeed, two non-TPPPPS players) to avoid banking. The Proposal implicitly recognizes as much, because it can be satisfied by *one* player other than the TPPPPS accepting the player-dealer at least twice in a 40-minute period, whenever there is only one non-TPPPPS player at the table. If acceptance of the player-dealer position by one non-TPPPPS player is enough to make a game non-banked, then there is no necessity or basis in law for the Bureau to impose a more onerous two-player requirement.

The Proposal suggests that its temporal parameters are the result of a math equation. It begins by estimating that an average "round of play" takes three minutes. (No explanation is given for what a "round of play" is; if that refers to a hand, it is wildly high for nearly all games at nearly all times.) The Proposal then multiplies that three-minute estimate by an assumed "six to eight seated players." (This may be an appropriate estimate during peak hours, but often it is not even close to accurate.) This multiplication yields an 18-24 minute estimate—which the Proposal suggests is relevant because it means that 40 minutes allows "an approximate two complete play-throughs of the six to eight seated positions." That math is questionable. Some games allow for relatively quick hands (say, 90 seconds), while a few games feature relatively long hands (say, 5 minutes). The Proposal's equation is based on an inapt generalization, applicable to varied games. The Proposal's math is also questionable because it depends on frequency of acceptance of the player-dealer position. If everyone accepted the player-dealer position, then under the Proposal's equation a "play-through" could take 24 minutes and would not occur twice in 40 minutes. If several players decline the player-dealer position, then a "play-through" could occur many more times than twice in 40 minutes. And in all events, the Proposal does not explain why two "play-throughs" has any significance, whether with respect to the "long time" standard suggested in *Oliver* or otherwise. It does not even explain how the length of a hand has any bearing on whether a player has maintained or operated a bank. Only one thing is certain: Nowhere in this convoluted mathematical exploration does the Proposal connect its 40-minute threshold to the prohibition on banking.

Moreover, to the extent the 40-minute threshold is meant to reflect the "long time" standard from *Oliver*, that is unjustified. *Oliver* is an unsound guide, for the reasons explained in Part II.C(1) above. But regardless, no basis exists to conclude that 40 minutes of a player-dealer game is a "long time." In ordinary usage,

determining what constitutes a "long time" depends on context. A friendship that lasts a "long time" can refer to decades, while a new swimmer who holds her breath for a "long time" can refer to mere seconds. For card games, few people would travel to a casino to play a game for only 40 minutes. The vast majority of patrons visit a cardroom or casino with the intention of remaining for several hours and going to several different tables or games for extended periods of time. It is not uncommon for patrons to stay for several hours. Even home card games (poker, bridge, or hearts, for instance) may last for several hours. The concept of a "long time" must be considered in the context of gaming. Notably, prior to the passage of Proposition 1A, tribal casinos offered player-dealer games rather than house-banked games. Tribal casinos allowed one player to occupy the player-dealer position for an entire dealing shoe of 6-8 decks, which (depending on the number of players at the table) could result in 50 or more hands played with the same person occupying the player-dealer position—effectively more than an hour at a time. The Tribes took the position that their practices were lawful under California law.

Section 2076(a)(4) also lacks the required clarity. It states that if there is "only one player at the table in addition to the TPPPPS, the player-dealer position shall rotate to that player a minimum of two times every 40 minutes." But there is no explanation of how to measure how many players are at the table over a 40-minute period. Players will join and leave a given table—such as to cash out, or play a different game, or even just to find a luckier seat. Often, players leave temporarily—to go to the bathroom, talk to a friend, grab a meal, or take a phone call. Some players hold their seat and leave their chips on the table for extended periods. Others leave the table altogether, then return just a few minutes later. During any 40-minute period, there may be times when there are eight players at the table, and times when there is only the TPPPPS and one other player. The Proposal does not explain how to count the number of players during those 40 minutes: Is it the number of players present at minute one or minute 40? Does the clock start over when a third person starts playing? If that third person plays for only 5 minutes of the 40, do three people still need to accept the player-dealer position within 40 minutes? The Proposal also lacks clarity because it does not explain what it means for a game to "end."

Finally, this provision lacks clarity, necessity, and authority because it fails to account for "dead spreads" when nobody is wagering. Dead spreads occur when a table is open but there are no active players. Some cardrooms will keep the table open with the dealer present with no activity; other cardrooms will deal out "dead" hands with no wagers in order to interest new players in sitting down. The Proposal does not state if dead-spread time counts toward the 40-minute limit. For example, does the clock on the 40 minutes run only when there are active wagers?

There is no authority for requiring acceptance of the player-dealer position during any fixed period, let alone a period that includes a dead spread—when at most one participant is present at the table. No authority requires a cardroom to close a table without active wagers and insist on a new person taking the player-dealer position when the game resumes, which could be hours or even a day later.

(5) Section 2076(a)(5)

This provision would stop a game indefinitely until another person accepts the player-dealer position, even if that occurs days later. That extreme rule is unnecessary and unwarranted. This provision fails the requirements of authority, necessity, clarity, and consistency.

For all of the reasons already discussed, the Bureau has no authority or lawful basis to require games to "end" or "stop" because the player-dealer position has not been accepted by two players in a 40-minute period. Beyond those fundamental problems, this provision is wholly unclear. It says that, if the required acceptances do not occur, "game play shall stop, the table shall be cleared of all wagers and cards, no cards shall be dealt, and no wagers shall be made. No further play shall be allowed or commenced unless and until another person accepts the player-dealer position." It is unclear what the Proposal requires by this provision. If game play has stopped and the table has been cleared, there is every reason to think that the participants have left the table. There may be no new participants available to accept the player-dealer position. And if a new participants *is* willing to accept the player-dealer position, then why must the game "stop" and the table be "cleared"? Other questions abound. Does the stoppage apply only at the table? Does it apply to the participants who had been at the table, even if they move to a new table? How is a new player supposed to start a game if the table has been cleared? Must they go to the casino manager and ask them to open a new table for the purpose of accepting the player-dealer position? The provision never says.

The lack of clarity is well illustrated by the analysis in the SRIA. The BEAR Report states that "if no rotation occurs, the game must stop. However, it is possible that a new, different game could immediately commence at the same table." (SRIA at p. 15.) It is unclear what circumstances could allow a new game to "immediately" commence after a stoppage. It also is unclear what the BEAR Report means by a "different" game—what differences are required to make a game "different" in this context—must it be a game subject to a different approval from the game that stopped, or must it be a game that involves different participants than had been present when the game stopped, or both of those, or something else entirely? At a minimum, the Proposal should address whether the Bureau's economic experts read the proposed regulations correctly or incorrectly, and resolve

any discrepancies through a revised regulation and/or revised SRIA. It should also clarify whether the economic experts retained by the Bureau have sufficient understanding of the industry and the Proposal to meet the APA requirements for a sufficient economic review.

Moreover, this provision is more burdensome than necessary. In the Bureau's 2016 guidelines, a game whose play did not conform to those guidelines would need to pause for two minutes before it could resume. There is no need for the Bureau to take the more significant step of stopping all game play indefinitely until a participant accepts the player-dealer position against his or her will. In fact, the Bureau could adopt an even shorter game break than envisioned in 2016 (30 or 60 seconds would suffice) and achieve the same goal. A short game break would interrupt the possibility of a particular participant continuously occupying the player-dealer position, as the Bureau recognized in 2016.

This provision is also unreasonable and harmful to cardroom patrons. It can be off-putting to a new participant to be told she *must* take the player-dealer position, against her will, on her very first hand when she has just taken a seat—for no reason other than because, many hours earlier, the game broke with entirely different people present. It is also inconsistent with the role of a regulator for the State to force players to make particular wagers.

(6) Section 2076(a)(6)

In addition to the problems already discussed with the 40-minute rule, this provision lacks clarity. It states that "[i]f the 40-minute mark is reached during a round of play," then the "round of play may be completed before the game ends." The Proposal never defines "round of play," so this provision does not provide any clear instruction to cardrooms or to those who may monitor and enforce the Proposal.

(7) Section 2076(a)(7)

This provision fails the requirements of authority, necessity, clarity, and consistency. As discussed, there is no basis in law or reason to single out TPPPPS players for disfavored treatment. This provision also is inconsistent with the Bureau's stated purpose, and thus unnecessary. It prevents multiple representatives of the same TPPPPS from sitting next to each other at a table—a circumstance that would likely produce *more* acceptance of the player-dealer position, not less—diversifying the persons against whom players are wagering and further ensuring that the game is not the one against the many.

B. Section 2076(b)(1) and (b)(2)

This subsection fails the requirements of authority, necessity, clarity, and consistency. There is no authority for the Bureau to bar games featuring a rotating player-dealer position from allowing certain forms of wagering by TPPPPS participants who are not in the player-dealer position. As described in section Part III.C above, such restrictions are inconsistent with the Legislature's authorization and regulation of TPPPPS players, and they are inconsistent with the stated purpose of the Proposal because they make banking *more* likely, not *less* so, by removing mechanisms by which the wager on the player-dealer position is shared among multiple players. They are also inconsistent with governing law because the GCA authorizes the forms of wagering that the Proposal would restrict. Under Business and Professions Code section 19843, other players can place wagers "with a single-seated player upon whose hand the wagers are placed" (Bus. & Prof. Code, § 19843), *i.e.*, backline wagers. Court decisions recognize the possibility of wagers behind seated players. (See *Huntington Park*, *supra*, 206 Cal.App.3d at p. 245; *Sullivan*, *supra*, 189 Cal.App.3d at p. 677, fn. 2.) The relevant statutes and decisions make no exceptions for wagers behind the player-dealer position, nor do they authorize a distinction between TPPPPS and non-TPPPPS participants.

C. Section 2076(c)

The Proposal provides that only one TPPPPS can offer services at a table in a player-dealer game. There is no legal authority for such a requirement, and it is inconsistent with governing law. The Bureau has identified no authority for preventing a particular person from participating in a game merely because someone else is also participating in that game, and no such authority exists. And, as explained in Part III.C above, this provision is contrary to the Proposal's own stated purpose, and thus fails the consistency and necessity tests, because having two TPPPPS at a table would *facilitate* the acceptance of the player-dealer position by multiple, unaffiliated participants. This provision also fails the consistency test because the Commission's regulations are written so that representatives of more than one TPPPPS may play at a single table: TPPPPS contracts are required to provide only "[t]hat no more than one" owner, supervisor, or player "*from each*" *provider* of proposition player service "may simultaneously play at a table." (Cal. Code Regs., tit. 4, § 12270, subd. (b)(5), italics added.) Similarly, a gambling establishment "may contract with more than one [third party service] at the same time." (*Id.* § 12270, subd. (g).)

D. Section 2077

The proposed modification and revocation procedures fail to meet the standards for adoption under the APA.

(1) Section 2077(a)

This subsection requires a cardroom that offers a game featuring a player-dealer position prohibited by the proposed regulation to submit an application to modify that game along with updated game rules that comply with the proposed regulation within 60 days. But a cardroom should be able to submit a *substitute* game for expedited review rather than being compelled to modify an existing game. Another person or cardroom may develop or have a suitable or newer game that the cardroom wishes to use. Moreover, if these regulations are overturned or enjoined, the cardroom may wish to continue using the previously approved game, rather than be limited to a game that has been modified to accommodate a regulation that is no longer in effect. The regulation should not prevent cardrooms from using currently approved rules in the event the regulation is enjoined or invalidated. The review that the Bureau would undertake would be the same in either case, because we understand that the Bureau's practice when reviewing modifications is to re-review the whole set of game rules. In all events, the 60-day time period provided by this subsection is too short. Currently, an application for approval of a poker game that is identical to games already approved by the Bureau for other cardrooms in the state can take the Bureau upwards of six months to approve. In light of the Bureau's current practices for reviewing even non-controversial games, we suggest that any regulations provide for a longer time period—at least 180 days—to provide sufficient time for cardrooms to submit any necessary applications. A longer time period would be particularly necessary if the Bureau proceeds at the same time with both this rulemaking and the rulemaking concerning blackjack-style games, because cardrooms would need to address both sets of new rules at once.

(2) Section 2077(f)

This subsection provides that "[n]o other modifications shall be made to the game rules during this process." The "process" referred to in this subsection seemingly includes a 60-day period for submitting modifications to game rules, as described in subsection (a), and a 120-day period for approving or disapproving such modifications, as described in subsection (b). Taken together, this "process" can take up to 180 days. It is unclear precisely what "modifications" are barred during this approximately half-year period. For that reason, subsection (f) lacks the clarity required for adoption under the APA.

If subsection (f) prohibits all modifications to controlled games during the 180-day period aside from those pursued pursuant to section 2077, that prohibition is substantially more burdensome than necessary to achieve any legitimate objective and is otherwise inconsistent with law. Even if the prohibition is limited to controlled games featuring a player-dealer position, it still suffers from the same infirmities. The Bureau has no legal basis to prohibit modifications to game rules not inconsistent with this Proposal, especially for a lengthy, 180-day period. Such a prohibition would hamstring cardrooms that wish to keep their game rules current and competitive. The Proposal justifies this requirement by stating that it would "accommodate the anticipated high volume of submissions." (ISR, at p. 8.) But that is a problem of the Bureau's own making; it is not a reason to prevent cardrooms from invoking the Bureau's other responsibilities during that period.

Finally, to the extent this subsection prohibits all modifications other than those submitted pursuant to subsection (a) of proposed section 2077, that prohibition would be inconsistent with the proposed section 2075 in the proposed regulations concerning blackjack-style games. Proposed section 2075 requires any cardroom that "offers blackjack-style games previously approved by the Bureau that do not comply with [proposed] section 2074" to submit an application that "[s]eek[s] to modify" the game. (Proposed § 2075, subd. (a).) But a cardroom could not submit such a modification request under proposed section 2077, subdivision (f), because that provision seemingly prohibits "other modifications" aside from those under proposed section 2077—a section that covers modifications "for compliance with" the rotation regulations (and not the blackjack-style game regulations). (Proposed § 2077, subd. (a).) Accordingly, if the Bureau proceeds with both sets of proposed regulations, subsection (f) of proposed section 2077 would fail the APA requirement of consistency.

(3) Section 2077(g)

This subsection provides that, if the Bureau does not receive a request to review or an application to modify within a certain timeframe, it shall deem the corresponding game non-compliant. As discussed in Part I.A above, the procedure described in this section is inconsistent with the GCA, exceeds the Bureau's authority, and lacks constitutional due process protections, including notice of the reasons for denying a game or game modification and the right to a hearing before a neutral decision-maker before an existing game approval is revoked. The revocation of an existing game approval described in Section 2077 involves no hearing at all; unilateral notice from the Bureau is all that would be required to revoke an approval. Such summary action by executive fiat is clearly unconstitutional. The Bureau must specify why a game is being revoked or

rejected, and there must be a hearing on that decision. The procedures outlined in the GCA, under which revocations proceed to a neutral hearing before the Commission, are not optional statutory paths—they are the embodiment of the fair and neutral process that is due to cardrooms, their employees, and the communities those cardrooms support. (See *Bauer*, *supra*, 75 Cal.App.4th at p. 1294 [providing that the State may revoke a business permit "only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation"] [quotation marks omitted].)

V. The Standardized Regulatory Impact Analysis Substantially Understates and Incorrectly Assesses the Effects of the Proposed Regulations

Under the APA, the Bureau must prepare a "standardized regulatory impact analysis" (SRIA) for any "major regulation" it proposes. (Gov. Code, § 11346.3, subd. (c)(1).) A regulation is "major," and thus requires a SRIA, if it is subject to review by Office of Administrative Law and will have an "economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars." (*Id.* § 11342.548.)

The requirement to prepare a SRIA is not a mere formality; it is an essential input to the regulatory process that ensures that the Bureau "avoid[s] the imposition of unnecessary or unreasonable regulations," bases any regulation on "adequate information," and "consider[s]" any proposal's "impact on business, with consideration of industries affected." (Gov. Code, § 11346.3, subd. (a)(1)-(2); see also Cal. Practice Guide: Administrative Law, *supra*, ¶ 23:101 ["The purpose of the ... SRIA requirement[] is to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions in the least burdensome manner."].)

To provide that input, a SRIA must address a range of important issues, including whether the proposal will eliminate jobs in the State, decrease investment in the State, and provide any benefits to the health, safety, and welfare of residents in the State. (Gov. Code, § 11346.3, subd. (c)(1).) It must also describe and explain the assumptions underlying the economic analysis, the categories of individuals and businesses affected by the proposal, the inputs and outputs of the assessment, and the agency's interpretation of the results. (See Cal. Code Regs., tit. 1, § 2002, subd. (b)(2).)

The Proposal at issue here easily qualifies as a "major regulation," as the Bureau has determined. The Bureau has thus provided a SRIA, prepared by Berkeley Economic Advising and Research (BEAR). But the BEAR Report

accompanying the Proposal is deficient in several critical respects. We attach to, and incorporate into, these comments an analysis of the BEAR Report, prepared by Matthew Newman of the Blue Sky Consulting Group. (See Ex. A (Blue Sky Report).) Mr. Newman concludes that the BEAR Report "does not provide an accurate assessment of the potential adverse economic impact on the state," "contains numerous methodological errors and omissions which have the effect of understating the likely impact of the proposed regulations," "fails to adequately provide the basis for the underlying assumptions relied upon," "does not account for the adverse impact on the competitive advantages of the state's cardroom industry," and "fails to address the impact on 'specific categories of individuals and businesses' as required." (Blue Sky Report at p. 1.)

For these reasons, the BEAR Report is a deficient analysis that fails to provide the information that the Bureau requires to assess whether its Proposal is necessary and reasonable. We incorporate the Blue Sky Report in these comments and ask the Bureau to address its criticisms of the BEAR Report. Below, we emphasize and expand upon critical points in Mr. Newman's analysis.

A. The SRIA Omits Impacts on Affected Industries

The BEAR Report provides an arbitrary and inconsistent analysis as between the Bureau's rotation proposal and its blackjack-style game proposal. As to the rotation proposal, the BEAR Report asserts that the proposed regulations would "[e]liminate[] 50% of TPPPPS revenue" (SRIA at p. 20), but "does not assume any reduction in th[e] revenue stream" for cardrooms, despite its conclusion that "about half of players will leave cardrooms" (Blue Sky Report at p. 2 [quotation marks omitted].) By contrast, the BEAR Report "assumes that the Blackjack regulations would result in a 50% decline in cardroom revenue, but no decline in TPPPS revenue." (*Id.* at p. 2.) There are two significant problems with the BEAR Report's approach.

First, each of the assumptions is badly mistaken in its own right. "In fact, each proposed regulation would likely impact both cardroom and TPPPS revenues." (Blue Sky Report at p. 3.) Contrary to the BEAR Report, the rotation proposal would have serious financial consequences for cardrooms. Even the BEAR Report anticipates that "about half of players [would] leave cardrooms" under the Proposal. (SRIA at p. 20.) Such a mass loss of cardroom patrons would plainly reduce cardroom revenue. Likewise, the reduced cardroom attendance owing to the Blackjack proposal would inevitably affect TPPPPS that depend on cardroom activity for their revenue. The BEAR Report badly errs by assuming that the effects of the Blackjack proposal could be limited to cardrooms alone. As a result of the BEAR Report's unreasoned omissions, "the BEAR report significantly

understates the likely impact of the proposed regulations." (Blue Sky Report at p. 3.) Those errors are fundamental and fatal for this rulemaking. (See *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 114–115 ["We further conclude the Board was not permitted under the statutory scheme to ignore evidence of impacts to specific segments of businesses already doing business in California when proceeding under the APA."].)

Second, the BEAR Report's differential treatment of the two proposals is illogical. As Mr. Newman explains, the BEAR Report "does not indicate why the proposed player-dealer regulations would only affect TPPPS revenues and the Blackjack regulations only cardroom revenues." (Blue Sky Report at p. 3.) No plausible reason for that distinction exists, for the same reasons just explained. The arbitrary difference in the BEAR Report's analysis shows the report is unreliable and further reinforces that the underlying assumptions are in error.

B. The SRIA Vastly Underestimates the Economic Consequences of the Proposals

The BEAR Report fails to account for obvious consequences of the proposals beyond activity at the gaming tables themselves, resulting in a substantial underestimate of the proposals' economic consequences. The BEAR Report makes this error in at least two respects.

First, as Mr. Newman explains, while the BEAR Report makes assumptions regarding impacts on TPPPPS and cardroom revenues, the BEAR Report "does not estimate any reduction in revenue from other, related sources, such as food and beverage sales, retail activity, and hotel revenues." (Blue Sky Report at p. 3.) To be sure, the BEAR Report acknowledges that there will be likely impacts on "a variety of associated attractions or appurtenant services including restaurants, bar, and hotels" (SRIA at p. 17)—but it nevertheless fails to quantify them. "[T]his omission has the effect of understating the overall economic impact of the proposed regulations." (Blue Sky Report at p. 3.)

Second, the BEAR Report fails to examine the actual impacts *on businesses* from the proposals, even assuming that its prediction regarding *player* activity is correct. The BEAR Report finds that the proposals will cause "about half of players" to "leave cardrooms." (SRIA at p. 20.) The BEAR Report proceeds to make economic assessments based on that assumption, but it fails to appreciate the actual effects *on cardrooms* of a 50% reduction in cardroom patrons. Even assuming that a 50% reduction in cardroom patrons translates to a 50% reduction in cardroom revenue, that says nothing about the effects on the viability of the businesses. Because businesses depend on the ability to earn a profit from their

activity, and many cardroom costs are fixed or would not drop by a similar level, the impact of a 50% decline in revenue would likely be catastrophic for many cardrooms. For example, a 50% loss of patrons would fail to sustain current cardroom leases, payments on loans, employment agreements, and many other costs that are fixed or relatively inflexible. The problems could be further exacerbated if, as we expect, the players who leave are those who place larger wagers, and thus generally pay larger collection fees, generating an outsized share of cardroom revenue. Cardrooms would cease to exist as we know them if they lost 50% of their patrons.

The result would be far more calamitous than the Bureau assumed. (See NPR at p. 9 ["The Department estimates that the proposed regulation (compared to baseline scenario) would result in 311 fewer jobs per year over the period of 2026-2035."]; *ibid.* ["The Department has determined that this regulatory proposal will not have a significant impact on existing businesses or the expansion of businesses in California."].) In reality, it is far closer to the "relatively extreme" scenario modeled in the BEAR Report, which finds that in the next ten years "cessation of cardroom gambling would reduce state GSP by over $1.3B and jobs by more than 1,000" per year. (SRIA at p. 42.) Job loss would almost certainly be even more substantial than the BEAR Report's most extreme estimate, considering the tens of thousands of living-wage jobs that cardrooms support. (See *ante*, Part III.A.) The BEAR Report's failure to consider the most basic principles of business operation renders its conclusions an unsound basis for the Bureau to consider the effects of its proposals.

C. The BEAR Report Does Not Actually Model the Rotation Proposal Because a Critical Assumption of the BEAR Report Is Inconsistent with the Rotation Proposal

The BEAR Report is based on an incorrect assumption about the Proposal, causing the report to understate the effects of the Proposal—potentially by a significant margin.

The BEAR Report states that cardrooms could satisfy the rotation proposal by "contract[ing] with multiple TPPPPS to alternate the role of player-dealer in some agreed rotation from one TPPPPS to another." (SRIA at p. 15.) In other words, the BEAR Report sees a ready mechanism for cardrooms to ensure that player-dealer games can continue much as they have previously—by ensuring that multiple TPPPPS players are at the table, and that each accepts the player-dealer position in a rotation.

Although we think the BEAR Report's assumption is correct in the sense that Bureau has no legal basis to prohibit the presence of multiple TPPPPS players at one table (see *ante*, Parts III.C(2), IV.C.) the Proposal itself expressly forecloses the very scenario the BEAR Report assumes to be possible. Proposed section 2076, subdivision (c), states: "No more than one third-party provider of proposition player services shall be permitted to offer services at a table where a game that features a rotating player-dealer position is being offered for play." Accordingly, the very mechanism that the BEAR Report assumed was available to minimize the harm of the Proposal is not available at all.

It is not clear from the BEAR Report the precise extent to which its incorrect assumption factored into its analysis. But it is at least clear that if the BEAR Report had used "an interpretation consistent with the text of the regulations," the "assumed impact of the regulations would be greater than the value presented in the report. As a result, the economic impact presented in the report understates the actual impact using a more appropriate interpretation of the regulations." (Blue Sky Report at p. 4.) If nothing else, though, the Bureau has not complied with the requirement to issue a SRIA if the analysis it has offered does not actually conform to the regulations it has proposed.

D. The SRIA Fails to Provide Support for Key Assumptions

The BEAR Report does not include support for critical assumptions that underlie its analysis. "The BEAR SRIA report relies on several assumptions with respect to (a) the decline in revenues to TPPPS and cardrooms, (b) increases in revenues for other non-Blackjack games if Blackjack is eliminated, and (c) increases in revenues to tribal casinos. These assumptions comprise the foundation for the report's conclusions but are not supported by any data or analysis." (Blue Sky Report at p. 4; see also *id.* at p. 5 [quoting the BEAR Report's author as stating, "we have not been able to find any data or industry adjustments to gaming rule changes of the type being considered"].) For example, the BEAR Report does not provide support for its assumptions that "about half of players will leave cardrooms," or that "new games … and patron loyalty result in a 50% increase of other cardroom activities," or that "50% of cardroom TPPPPS patronage (by revenue) will be diverted to tribal casinos." (*Id.* at p. 4 [quoting SRIA at pp. 20-21].) These deficiencies persist despite the Department of Finance's comments on the original SRIA, which noted that "the SRIA must provide the rationale for any underlying assumptions that are material to the analysis." (*Id.* at p. 5 [quoting Letter from David Roland-Holst to Somjita Mitra dated November 19, 2024].) Absent further support for the basic assumptions underlying its economic analysis, the Bureau has "fail[ed] to make a reasoned effort to initially assess the economic impact" of the

Proposal, as the APA requires. (*Western States Petroleum Assn. v. Bd. of Equalization* (2013) 57 Cal.4th 401, 431 [deeming a regulation invalid where the agency's economic analysis was based on "an opaque calculation [of economic impacts] unsupported by any facts or other evidence explaining its validity as a reasonable estimate"].)

The BEAR Report also fails to support its assessment of the Proposal's fiscal impacts. The report states that the Proposal would result in "net increases in state and federal revenue," because of "shifting economic activity away from gaming toward more heavily taxed activities." (SRIA at p. 33.) This assertion is "not accompanied by any analysis or supporting data." (Blue Sky Report at p. 6.) Nor does it make logical sense. "[C]ardroom gaming is subject to the same taxes on income or profits that all other California businesses pay," and cardrooms also pay local gaming or business license taxes, property taxes, and sales taxes. (*Ibid.*) Tribal casinos, by contrast, "do not pay" the same set of taxes. (*Ibid.*) "As a result, the conclusion that tax revenue would increase as a result of the regulations (which are anticipated to reduce overall state economic activity) is not supported by the data or analysis presented in the report." (*Ibid.*)

The Bureau compounds that error by failing to take account of the likely impact on local communities. "[M]any local jurisdictions in California rely to a significant extent on revenue from cardrooms. Reducing this revenue stream could have a potentially significant adverse impact on the budgets of these communities." (Blue Sky Report at p. 6.) The Department of Finance emphasized the importance of providing "quantitative estimates of any revenue changes at the local level," but the revised SRIA "still fails to account for the disparate impacts on individual local communities throughout the state." (*Ibid.* [quotation marks omitted].) The SRIA also fails to reconcile its estimate of $109 million in lost state and local taxes with its overall, positive assessment of the proposals' fiscal impacts. (See *ibid.*)

E. The SRIA Does Not Assess the Competitive Effects of the Proposal

Finally, despite the legal requirement that a SRIA assess the competitive advantages or disadvantages of a proposal (see Gov. Code, § 11346.3), the BEAR Report fails to do so. It "does not identify the extent to which the proposed regulations would impact the competitiveness of the cardroom industry or the extent to which patrons would shift their gaming activity to other states or to unregulated (illegal) gaming venues." (Blue Sky Report at p. 5.) As discussed above, this failure to follow the legal requirements for preparation of a SRIA compromises the ability of the Bureau or the public to understand numerous important implications of the Proposal, ranging from fiscal impacts (see Part V.B,

supra) to added burdens on local law enforcement due to diversion of gaming activity away from well-regulated cardrooms to illegal operations (see Part III.B, *supra*).

VI. Conclusion

The Bureau has for many years approved offer-only player-dealer games for play in licensed cardrooms because those games are legal under California law. Nothing in the Proposal offers any reason to believe otherwise. To the contrary, the Proposal plainly conflicts with the governing statutes and settled judicial precedent interpreting it. The Bureau should not proceed with the Proposal.

Yours truly,

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Oliver L. Brown
Munger, Tolles & Olson LLP
Counsel for the California Gaming Association

Clarke Rosa
President, Communities for California Cardrooms

Keith Sharp
President, California Cardroom Alliance

The following entities also join in the CGA's opposition to the Proposal:

Artichoke Joe's Casino

Bay 101

Blackstone Gaming

California Grand Casino

Capitol Casino

Casino Club

Casino M8trix

Club One Casino

Crystal Casino

Elevation Entertainment
- Seven Mile Casino
- The Saloon at Stones Gambling Hall
- The Tavern at Stones Gambling Hall

Hollywood Park Casino

Hustler Casino

Kings Card Club

Knighted Ventures

Larry Flynt's Lucky Lady Casino

Lucky Chances Casino

Napa Valley Casino

Oaks Card Club

Ocean's Eleven Casino

Outlaws Card Parlour

Palace Poker Casino

Parkwest Casinos
- Parkwest Bicycle Casino
- Parkwest Casino Cordova
- Parkwest Casino Lodi
- Parkwest Casino Lotus
- Parkwest Casino Manteca
- Parkwest Casino 580

Players Casino

Players Edge

Seven Mile Casino

Stars Casino

The Aviator Casino

The Commerce Casino & Hotel

Westlane Card Room

Hawaiian Gardens

Exhibit A

MEMORANDUM

To: Interested Parties

From: Matthew Newman, The Blue Sky Consulting Group

Date: May 22, 2025

Re: SRIA Regarding Proposed Cardroom Dealer Rotation and Blackjack Regulations

Summary

California law requires that proposed major regulations undergo an economic analysis to "assess the potential for adverse economic impact on California business enterprises and individuals."[1] Such an economic impact analysis is known as a "standardized regulatory impact assessment" or SRIA. The Government Code and California Code of Regulations provide the requirements for SRIAs. Specifically, any SRIA must identify "the underlying assumptions the agency used and the rationale and basis for those assumptions" and "the specific categories of individuals and business enterprises who would be affected," among other requirements.[2]

This memo presents an analysis of the December 2024 SRIA regarding proposed regulations affecting player-dealer rotation and Blackjack at California cardrooms as prepared by Berkeley Economic Advising and Research (BEAR).[3]

Based on this review we find that the BEAR SRIA does not provide an accurate assessment of the potential adverse economic impact on the state. The report contains numerous methodological errors and omissions which have the effect of understating the likely impact of the proposed regulations. Furthermore, the report fails to adequately provide the basis for the underlying assumptions relied upon, does not account for the adverse impact on the competitive advantages of the state's cardroom industry, and fails to address the impact on "specific categories of individuals and businesses" as required.

[1] California Government Code Section 11346.3.

[2] California Code of Regulations, Section 2002(b)(2) available at: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=3.5.&article=5..

[3] "BEAR Report" available at: https://oag.ca.gov/system/files/media/isor-appendix-d%20-revised-sria.pdf (accessed February 19, 2025).

Methodological Errors Result in Understated Economic Impacts

California Government Code Section 11346.3 states that "a state agency proposing to adopt… any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals" and shall assess the "competitive advantages or disadvantages for businesses currently doing business within the state." Methodological errors in the BEAR report have the effect of understating the likely economic impact of the proposed regulations, resulting in a SRIA that does not provide an accurate assessment of the "adverse economic impact" of the proposed regulations.

Omission of Cardroom and TPPPS Impacts

The BEAR report states that the imposition of the proposed changes to player-dealer rotation "will likely change gaming dramatically and it is expected that about half of players will leave cardrooms." Although the report asserts that cardrooms will experience a reduction in customers, the economic impacts of the proposed player-dealer regulations are limited to Third-Party Providers of Proposition Player Services (TPPPS), with no cardroom impacts presented. Specifically, the BEAR report asserts that the proposed regulation "eliminates 50% of TPPPPS revenue," an amount equal to $396 million in 2023, or half of the $794 million in total TPPPS revenue reported in the BEAR report.[4, 5] During the same year, however, the BEAR report shows cardroom gaming revenue of $1.356 billion. The BEAR report does not assume any reduction in this revenue stream resulting from the proposed player-dealer regulations, in spite of the fact that the report asserts that "about half of players will leave cardrooms."

Separately, the BEAR report assumes that the Blackjack regulations would result in a 50% decline in cardroom revenue, but no decline in TPPPS revenue. Specifically, the BEAR report states that "we assume that changes to currently approved Blackjack games could result in the elimination of revenues associated with these games."[6] The report further states that "we also assume however, that new games… and patron loyalty result in a 50% increase of other cardroom activities, partially offsetting the lost revenue from Blackjack games."[7] This results in an assumed 50% reduction in cardroom Blackjack gaming revenue. Specifically, the report concludes that "elimination of all Blackjack revenue from cardrooms with replacement of 50% of revenue from new games could represent a $68M cost to cardrooms" (emphasis added). In

[4] Note that the BEAR report refers to "TPPPPS" rather than what the Attorney General refers to as "TPPPS" (see https://oag.ca.gov/gambling/forms/forms_card). For purposes of this memorandum, we assume that the BEAR report's references to "TPPPPS" are in fact references to "TPPPS."

[5] BEAR, op.cit., p. 20.

[6] BEAR, op.cit., p. 21.

[7] Ibid.

this case (unlike the case of the player dealer rotation regulations) the report directly assumes a reduction in cardroom gaming revenue. However, the report assumes no reduction in TPPPS revenue. To the extent cardroom revenue from Blackjack declines, however, TPPPS revenue related to Blackjack would decline as well, likely by a similar proportion (i.e., 50% of TPPPS Blackjack revenue).

The report does not indicate why the proposed player-dealer regulations would only affect TPPPS revenues and the Blackjack regulations only cardroom revenues. In fact, each proposed regulation would likely impact both cardroom and TPPPS revenues.

As a result of omitting the impacts on cardrooms and TPPPS, respectively, the BEAR report significantly understates the likely impact of the proposed regulations.

Omission of Food and Beverage, Retail, and Hotel Revenues Results in Inaccurate Estimates

The BEAR report presents assumptions with respect to the impacts on TPPPS and cardroom revenues resulting from the proposed regulations. However, the report does not estimate any reduction in revenue from other, related sources, such as food and beverage sales, retail activity, and hotel revenues, although it acknowledges such impacts are likely. Specifically, the report states that, "impacts are not expected to be limited to the gaming-related operations but to indirectly affect a variety of associated attractions or appurtenant services including restaurants, bar, and hotels."[8] While these sources of revenue are not directly subject to the proposed regulations, any reduction in cardroom patronage would likely impact these revenues as well, as the report acknowledges. As with the failure to include both cardroom and TPPPS revenue in the analysis of the proposed regulations (as identified above), this omission has the effect of understating the overall economic impact of the proposed regulations.

Report's Interpretation Inconsistent with Proposed Regulation Text

The BEAR SRIA makes an important assumptions with respect to how the proposed regulations would be implemented by cardrooms and TPPPS that is at odds with the text of the proposed regulations. The result of this interpretation is lower estimated economic cost of the proposed regulations.

Specifically, the BEAR report assumes that cardrooms could contract with multiple TPPPS as a means of facilitating dealer rotation. The report states that, "the cardroom could contract with multiple TPPPPS to alternate the role of player-dealer in some agreed rotation from one TPPPPS to another."[9] However, the proposed regulations state that "No more than one third-party

[8] BEAR, op. cit., p. 16.

[9] BEAR, op. cit., p. 15.

provider of proposition player services shall be permitted to offer services at a table where a game that features a rotating player-dealer position is being offered for play." [10]

The BEAR report does not identify the relationship between these presumed cardroom response to the proposed regulations and the assumption with respect to the reduction in cardroom and TPPPS revenue. However, the interpretation made by the report's authors would have the effect of minimizing the impact of the proposed regulations on cardroom operations and revenues. Therefore, if an interpretation consistent with the text of the regulations were used instead, the assumed impact of the regulations would be greater than the value presented in the report. As a result, the economic impact presented in the report understates the actual impact using a more appropriate interpretation of the regulations.

No Support for Key Assumptions

California Code of Regulations Section 2002(b)(2) states that any SRIA must identify ""the underlying assumptions the agency used and the rationale and basis for those assumptions" and "the specific categories of individuals and business enterprises who would be affected," among other requirements.[11]

The BEAR report fails to address each of these requirements. The BEAR SRIA report relies on several assumptions with respect to (a) the decline in revenues to TPPPS and cardrooms, (b) increases in revenues for other non-Blackjack games if Blackjack is eliminated, and (c) increases in revenues to tribal casinos. These assumptions comprise the foundation for the report's conclusions but are not supported by any data or analysis. For example, the report states that "it is expected that about half of players will leave cardrooms,"[12] but no further explanation or data supporting this assumption is provided. Similarly, the report states, without support, "we also assume… that new games (including permissible alternatives to Blackjack allowed under the proposed regulations) and patron loyalty result in a 50% increase of other cardroom activities."[13] Finally, the report assumes that much of the revenue lost to cardrooms and TPPPS would be made up by increases in revenue to tribal casinos. However, no support for this assumption is provided. Specifically, the report states that, "we also assume 50% of cardroom TPPPPS patronage (by revenue) will be diverted to tribal casinos."[14] In no case is any justification, supporting data, or analysis for these assumptions provided, in spite of the fact

[10] Proposed player-dealer rotation regulations Section 2076(c).

[11] California Code of Regulations, Section 2002(b)(2) available at: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=3.5.&article=5..

[12] BEAR, op. cit., p. 20.

[13] BEAR, op. cit., p. 21

[14] BEAR, op. cit., p. 20.

that the resulting economic and fiscal impacts are directly related to the extent of these economic changes.

The Department of Finance noted in its comments on the original SRIA, that "the SRIA must provide the rationale for any underlying assumptions that are material to the analysis." Nevertheless, the revised SRIA also fails to provide a basis for the assumptions relied upon. In fact, the BEAR report's author, David Roland-Holst, acknowledged that, "we have not been able to find any data on industry adjustments to gaming rule changes of the type being considered."[15] In spite of this acknowledgement that the report's key assumptions and conclusions were not based on analysis of industry data, the revised report maintains the same unsupported assumptions and conclusions contained in the original.

Competitive Effects Not Identified

California Government Code Section 11346.3 states that a SRIA shall assess the "competitive advantages or disadvantages for businesses currently doing business within the state." In spite of this requirement, the BEAR SRIA does not identify the extent to which the proposed regulations would impact the competitiveness of the cardroom industry or the extent to which patrons would shift their gaming activity to other states or to unregulated (illegal) gaming venues. The only mention of such impacts is provided in a footnote on page 20 of the report, which states that "'leakage' of casino patronage to neighboring states with gaming such as Arizona or Nevada would further increase the economic impact on the state economy." Despite this acknowledgement that the proposed regulations would reduce the competitiveness of the state's cardroom industry relative to other states or the illegal market, no analysis of the extent of this impact is provided.

Fiscal Impacts Not Supported

Government Code Section 11346.36 requires the Department of Finance to adopt regulations governing the preparation of a SRIA, including "assessing the effects of a regulatory proposal on the General Fund and special funds of the state and affected local government agencies attributable to the proposed regulation." The BEAR report states that implementation of the proposed regulations would result in "net increases in state and federal revenue."[16] The report justifies this counterintuitive conclusion by stating that "this can happen as the result of shifting economic activity away from gaming toward more heavily taxed activities. For example, a food

[15] Letter from David Roland-Holst to Somjita Mitra dated November 19, 2024.

[16] BEAR, op.cit., p. 33.

safety scare might shift shoppers from farmer's markets to supermarkets, resulting in higher sales tax revenues for the same total household expenditure." [17]

The report's assertion –the counterintuitive result that a reduction in economic activity results in an increase in federal and state tax revenue – is not accompanied by any analysis or supporting data. Specifically, there is no explanation of the nature of the supposedly higher taxed activities that would result from a shift away from cardroom gaming. In fact, cardroom gaming is subject to the same taxes on income or profits that all other California businesses pay. Tribal casinos, however, do not pay these taxes on profits. In addition, cardrooms pay local gaming or business license taxes typically based on the amount of revenue generated, which tribal casinos do not pay. Cardrooms also pay property taxes and collect and pay sales taxes, unlike tribal casinos. As a result, the conclusion that tax revenue would increase as a result of the regulations (which are anticipated to reduce overall state economic activity) is not supported by the data or analysis presented in the report.

Furthermore, the report fails to account for the specific local impacts of the proposed regulations, thereby failing to comply with the California Code of Regulations requirement that a SRIA must identify "the specific categories of individuals and business enterprises who would be affected by the proposed major regulation."[18] In fact, many local jurisdictions in California rely to a significant extent on revenue from cardrooms. Reducing this revenue stream could have a potentially significant adverse impact on the budgets of these communities. The Department of Finance, in its comments on the original SRIA, highlighted the lack of analysis of the local fiscal impacts of the regulations, noting that "The SRIA must provide quantitative estimates of any revenue changes at the local level." In response, the revised SRIA includes a table showing aggregated local fiscal impact results, but still fails to account for the disparate impacts on individual local communities throughout the state. In addition, the aggregated fiscal impact results that are shown indicate a loss of state and local fee revenue of $109 million. However, there is no reconciliation of these results with the overall fiscal impact results, which still show an increase in revenue.

Conclusion

The BEAR report purports to provide an assessment of the likely economic and fiscal impacts of proposed player-dealer rotation and Blackjack regulations. However, methodological errors and failure to support the most important assumptions in the report mean that it does not provide

[17] Note that food purchases are not subject to sales tax regardless of whether they are made at a farmer's market or a supermarket and farmer's market vendors are responsible for collecting sales tax on taxable (non-food or prepared food purchases). Therefore, it is not likely the case that such a shift would increase tax revenue as suggested.

[18] California Code of Regulations, Section 2002(b)(2)(B).

a sufficient basis for decision makers or the public to assess the likely impact of the regulations and fails to comply with the requirements of California law and regulations.

Exhibit B

Face Up Pai Gow

Type of Game

The game of Face Up Pai Gow utilizes a player-dealer position and is a California game. Each player competes against the player-dealer to make the best possible hands. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players. The player-dealer position shall be offered systematically and continuously in a clockwise manner around the table at least after every two hands. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of play.

Object of Game

The object of the game of Face Up Pai Gow is to make a five-card hand and a two-card hand that ranks higher than the player-dealer's five-card hand and two-card hand. Face Up Pai Gow is a Pai Gow Poker variant and plays like conventional Pai Gow Poker, except the player-dealer's hand is shown first. In addition, when the player-dealer's hand is shown and the ranking is a seven-card ace-high hand, then all player hands will automatically push (tie) and the players' base game wagers will be returned to the players.

Description of the Deck and Number of Decks Used

Face Up Pai Gow is played with a standard 52-card deck including a joker for a total of 53 cards. Cards may be shuffled using either a manual hand shuffle or an automated shuffling machine.

Card Values and Hand Rankings

The rank of each card used in Face Up Pai Gow, in order of highest to lowest rank, will be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. The ace would be considered low any time the ace begins a Straight or a Straight Flush. The joker can be used as an ace or to complete any Straight, Flush, or Straight Flush. All suits will be considered equal in rank.

The hand rankings for the game of Face Up Pai Gow, in order of highest to lowest, are as follows:

Face Up Pai Gow Hand Rankings

Hand Dealt	Hand Requirements
Five Aces	A hand that consists of four aces and a joker.
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked Straight Flush and a 5, 4, 3, 2 and ace is the lowest ranked Straight Flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked Four of a Kind and four 2s is the lowest ranked Four of a Kind.
Full House	A hand that consists of a Three of a Kind and a Pair. Three aces and two kings is the highest ranked Full House and three 2s and two 3s is the lowest ranked Full House.
Flush	A hand that consists of five cards of the same suit but are not in consecutive ranking. An ace, king, queen, jack and 9 is the highest ranked Flush and a 7, 5, 4, 3, 2 is the lowest ranked Flush.
Straight	A hand that consists of five cards that are in consecutive ranking, but are not the same suit. An ace, king, queen, jack and 10 is the highest ranked Straight and a 5, 4, 3, 2 and ace is the lowest ranked Straight.

Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked Three of a Kind and three 2s is the lowest ranked Three of a Kind.
Two Pair	A hand that consists of two Pair. Two aces and two kings is the highest ranked Two Pair and two 3s and two 2s is the lowest ranked Two Pair. Two hands of identically ranked pairs are then ranked by the remaining cards in the hand accordingly from highest to lowest.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked Pair and two 2s is the lowest ranked Pair. Two hands consisting of the same pair are then ranked by the remaining cards in the hand accordingly from highest to lowest.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked High Card hand and 7, 5, 4, 3, 2 is the lowest ranked High Card hand.

Description of Table Used and Total Number of Seated Players

A standard semi-circular Pai Gow Poker table or a table like the sample table layout below will be used. The table layout will be marked with betting areas for base game wagers, Fortune Bonus Bets, Ace High Bonus Bets, and backline bettors.

The Pai Gow Poker table may seat a minimum of one and a maximum of seven active player positions and the player-dealer position, for a total of two to eight seated positions. When there are eight seated positions, one seated position is an “inactive” position, which allows the Casino to have or rotate one position that does not receive a hand.

Dealing Procedures and Round of Play

All wagers in Face Up Pai Gow will be made by placing gaming chips on the appropriate betting areas of the table layout keeping in mind the table minimum and maximum wagering limits.

1. At the start of a game a player is offered the player-dealer position. Once the player-dealer position is accepted, the house dealer shall wait for each player to make their wager in accordance with the table limits.
    a. Each player may have the following option(s) when placing their wager(s), and under minimum and maximum wagering limits:
        i. The base game wager which pays 1 to 1;
        ii. The Fortune Bonus Bet which pays according to the paytable, as shown below;
            1. If a player wagers at least $5 on the Fortune Bonus Bet, the player qualifies for the Envy Bonus and the house dealer must place an “envy” button next to the player’s Fortune Bonus Bet wager.
        iii. The Ace-High Bonus Bet which pays according to the paytable, as shown below.
2. Third-Party Providers of Proposition Player Services (TPPPS), as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
3. Backline betting is permitted on all wagers.
4. The cards will be shuffled and dealt to players in the following way using a shuffle machine or by hand.
    a. Hand Shuffle or Machine Shuffle (when the machine only shuffles the cards and the house dealer deals the hands):
        i. The house dealer may hand shuffle or use a shuffle machine to randomly intermix (shuffle) the cards. Regardless of the method used to shuffle the cards, the house dealer will deal cards into piles of seven cards face-down in front of them. Up to seven piles of seven cards will be dealt.

ii. When dealing the piles of seven cards, the house dealer shall deal one card at a time in front of the house dealer position, starting from left to right. Once each pile has its first card, the house dealer shall deal each pile another card, from right to left, giving each pile a total of two cards. This process of dealing cards left to right, then right to left, shall continue until each pile has seven cards.
iii. The house dealer will then place the remaining cards in the discard pile.
iv. The first pile will be given to the player that received the action button.
v. The action button, which designates the first player to receive first action from the player-dealer, is placed on the selected pile and will be the first hand distributed once the placement of that hand or the action button has been determined.
vi. To determine which position receives the action button, the house dealer will use either a digital or analog random number generator, such as a dice cup.
vii. If a dice cup is used, the player-dealer shakes a dice cup, which contains one, two, or three dice (depending on the number of seated positions being dealt to), and the numerical total of the die or dice determines the position of the hand with the action button. When seven active positions are being dealt to, the player-dealer's position is always one, eight, and fifteen. Other seats in clockwise rotation, respectively represent the other numbers. If the random number or total dice value is one, eight, or fifteen, the player-dealer shall receive the first set of cards and the player to the left of the player-dealer shall receive the "Action" button.
viii. If an electronic random number generator is used, the house dealer will trigger the device to select and display a random number that corresponds to a seated position on the table. The action button is assigned to the seat number the generator displays.
ix. All wagers must be placed before the action position is determined.
x. Once the first position is determined, the house dealer then distributes the piles of cards, starting with the action button and continuing clockwise.
xi. The player-dealer receives their cards in turn according to the action.
xii. Piles will be distributed to all positions. Once the piles of cards have been distributed, the house dealer will collect any cards that were distributed to seats without a wager and place them in the discard pile.

b. <u>Machine Shuffle and Deal (when machine shuffles and dispenses cards in piles of 7 cards):</u>
i. The house dealer will use a shuffle machine to randomly intermix (shuffle) cards.
ii. All wagers must be placed before the action position is determined. The first pile will be given to the player that received the action button.
iii. The action button, which designates the first player to receive first action from the player-dealer, is placed on the selected pile and will be the first hand distributed once the placement of the action button has been determined.
iv. To determine which position receives the action button, the house dealer will use either a digital or analog random number generator, such as a dice cup.
v. If a dice cup is used, the player-dealer shakes a dice cup, which contains one, two, or three dice (depending on the number of seated positions being dealt to), and the numerical total of the die or dice determines the position of the hand with the action button. When seven active positions are being dealt to, the player-dealer's position is always one, eight, and fifteen. Other seats in clockwise rotation, respectively represent the other numbers. If the random number or total dice value is one, eight, or fifteen, the player-dealer shall receive the first

set of cards and the player to the left of the player-dealer shall receive the "Action" button.

vi. If an electronic random number generator is used, the house dealer will trigger the device to select and display a random number that corresponds to a seated position on the table. The action button is assigned to the seat number the generator displays.

vii. Once action is determined, the house dealer will deliver the first seven cards to the action seat and continue clockwise around the table.

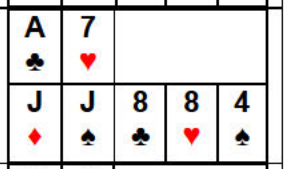
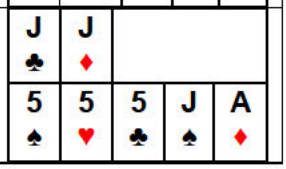
viii. The player-dealer receives their cards in turn according to the action.

ix. Piles will be distributed to all positions. Once the piles of cards have been distributed, the house dealer will collect any cards that were distributed to seats without a wager and place them in the discard pile.

5. The player-dealer's hand will then be exposed and set before the players set their hands. The hand will be set house way.
6. If the player-dealer has an ace-high seven-card hand, all player's wagers shall automatically push and any Ace-High Bonus Bets will win.
7. If the player-dealer's hand does not contain a seven-card ace-high hand, each player shall then set their hand by arranging the seven cards into a two-card hand, which is placed in front of the five-card hand, and a five-card hand, which is placed behind the two-card hand.
   a. The five-card hand must rank higher than the two-card hand, according to the hand rankings, as shown above.
   b. If the player sets their hand in one pile of seven (7) cards, or sets their hand in a way that could be improved, the house dealer will attempt to set the hand to a better outcome for the player whenever possible. If a winning outcome is not available, the house dealer will set the hand to a push outcome. If neither a winner nor a push outcome is available, the house dealer will set the hand according to "House Way". Players do not have to set their hand the "House Way", they are free to set the hand in any fashion they choose as long as it is not a foul hand.
   c. If a player arranges the two-card hand so it out-ranks the five-card hand, the hand will be reset.
8. Once the player's hands are set, each player's hand is in turn compared to the player-dealer's hands to determine the winners, losers, or push hands.
9. Each player's five-card hand will be compared to the player-dealer's five-card hand, and each player's two-card hand will be compared to the player-dealer's two-card hand, in turn.
10. If the player-dealer in first position covers all wagers, then the wagers can be settled in any order. If the player-dealer in first position does not cover all wagers, wagers shall be settled as though they were settled in a clockwise manner around the table, starting with the player with the "Action" button. All wagers shall be settled from seat to seat in the following order: the Pai Gow Poker game wager, the Ace-High Bonus Bet, the Fortune Bonus Bet, and then the Envy Bonus.
11. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players.

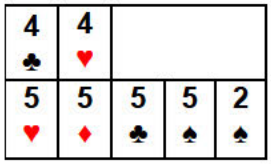
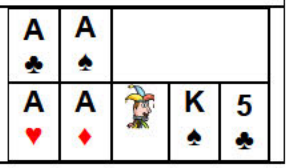
Face Up Pai Gow

Face Up Pai Gow House Way Hand Set

Hand Dealt	House Way	Example
High Card	Put 2nd and 3rd highest cards in front.	
One Pair	Put Pair in back, highest two cards in front.	
Two Pair: High Pair is As, Ks, or Qs	Put small Pair in front.	
Two Pair: High Pair is Js, 10s, or 9s	Put both Pairs in back if an ace can be played in the front, otherwise put small Pair in front.	
Two Pair: High Pair is 8s, 7s, or 6s	Put both Pairs in back if an ace or king can be played in the front; otherwise put small Pair in front.	
Two Pair: High Pair is 5s, 4s, or 3s	Put both Pairs in back if an ace, king or queen can be played in the front, otherwise put small Pair in front.	
Three Pair: With or without a Straight, Flush, or Straight Flush	Put highest Pair in front.	
Three of a Kind: Aces	Put an ace and highest single card in front.	
Three of a Kind: Kings and below	Put two highest single cards in front.	
Two Three of a Kinds	Put highest Pair possible in front.	

Face Up Pai Gow

Straight, Flush, or Straight Flush with no Pair	Put the highest possible two cards in front that will leave a complete hand in back.	A♠ 9♠ 6♠ 5♠ 4♣ 3♦ 2♠
Straight, Flush, or Straight Flush with one Pair	Put the highest possible two cards (Pair or no Pair) in front that will leave a complete hand in back.	J♥ 8♦ 9♠ 8♥ 6♠ 5♦
Straight, Flush, or Straight Flush with two Pair	Play as Two Pair strategy.	7♦ 7♣ 9♥ 9♦ Q♦ J♦ 4♦
Straight, Flush, or Straight Flush with Three of a Kind	Put the highest possible two cards (Pair or no Pair) in front that will leave a complete hand in back.	5♣ 5♥ 7♦ 6♠ 5♦ 4♠ 3♥
Full House and a Pair or Two Three of a Kinds	Put the highest Pair in front while keeping at least Three of a Kind behind.	8♣ 8♥ 4♥ 4♠ 4♦ 8♠ K♥
Four of a Kind As, Ks, or Qs	Split to Pair-Pair.	Q♣ Q♦ Q♥ Q♠ 9♠ 7♦ 5♣
Four of a Kind: Js, 10s, or 9s	Play Four of a Kind in back if at least a king can be played up front, otherwise split.	J♦ J♠ J♥ J♣ Q♦ 10♠ 7♥
Four of a Kind: 8s, 7s, or 6s	Play Four of a Kind in back if at least a queen can be played up front, otherwise split.	8♥ 8♦ 8♣ 8♠ J♣ 7♠ 4♦
Four of a Kind: 5s or below	Always play Four of Kind behind.	9♥ 8♣ 5♠ 5♦ 5♥ 5♣ 2♠

Four of a Kind with a Pair	Play the Pair in front and play Four of a Kind in back. If you have four of a kind and three of a kind, then play the highest ranking Pair in front with either Four of a Kind or Full House behind, unless they are adjacent ranks (i.e, 4444 and 33) in which case put the four of a kind in back.	
Five Aces	Play a Pair of aces in front.	

How Winners are Determined and Paid

Once each player has set their hands and the house dealer has set the player-dealer's hand, each player's hand shall be compared against the player-dealer's hand. The following shall apply for each possible outcome when determining which hand wins, loses, or if there is a push.

- The base game wager wins if the two-card hand and the five-card hand, held by the player, ranks higher than the player-dealer's two-card hand and five-card hand.
- The base game wager loses if the two-card hand and the five-card hand held by the player, ranks lower than the player-dealer's two-card hand and five-card hand.
- The base game wager "pushes" if one of the hands held by the player ranks higher than the player-dealer's corresponding hand, and the player's other hand ranks lower than the player-dealer's corresponding hand. In this case, neither the player nor the player-dealer wins or loses; the wager is a push and is returned to the player. The base game wager also "pushes" if the ranking of the player-dealer's shown hand is a seven-card ace-high hand. Neither the player nor the player-dealer wins or loses; the wager is a push and is returned to the player.
- If either the two-card hand or the five-card hand is identical in rank to the player-dealer's two-card hand or five-card hand, it is a "copy hand." The player-dealer wins all copy 2 or 5 card hands. If both hands copy, the player-dealer wins except where the dealer has a Ace-High Pai Gow and the hands push.
- The player-dealer shall pay all winning Ace-High Bonus Bets made by players when the player-dealer's or the player-dealer and player's hand is an ace-high seven-card hand.
- The player-dealer shall collect all losing Ace-High Bonus Bets made by players when the player-dealer's hand is not an ace-high seven-card hand.
- The player-dealer will collect losing Fortune Bonus Bets and pays winning Fortune Bonus Bets to the extent of the player-dealer's wager.
- A player qualifies for an Envy Bonus payout when a player places a Fortune Bonus Bet of at least $5. The player-dealer shall pay all winning Envy Bonus' when a player at the table receives a Four of a Kind or higher, excluding the player-dealer hand or their own hand.

Bonus Bets

Ace-High Bonus Bet

The Ace-High Bonus Bet is an optional bonus bet that allows a player to bet that the player-dealer or the player and the player-dealer will be dealt a predetermined and designated qualifying hand, as described below. There will be a distinctly marked area on the table in which a player may place the optional bonus bet.

- A player has to place a base game wager in order to place the Ace-High Bonus Bet. Any seated player as well as any backline bettor may place an Ace-High Bonus Bet if they have made a base game wager.
- The Ace-High Bonus Bet takes into account the first seven cards dealt as a player's hand and the player-dealer's hand. In the event that the first seven cards dealt to a player that placed a bonus bet and the player-dealer's hand is a predetermined and designated qualifying hand, as described below, the bonus bet will win. The player will then receive a monetary payout based on the bonus hand that the player has received and the paytable, as shown below. Any other combination of the first seven cards dealt, other than the hands described below, will lose.
- The player-dealer will pay all winning Ace-High Bonus Bets and will collect all losing Ace-High Bonus Bets.
- Winning Ace-High Bonus Bets will be paid according to the table below.

Qualifying Hands	Payout
Player and Player-Dealer Each have Ace High Card Hands	45 to 1
Player-Dealer Ace High Card Hand (with Joker)	20 to 1
Player-Dealer Ace High Card Hand (No Joker)	5 to 1

Fortune Bonus Bet

The Fortune Bonus Bet is an optional bonus bet. It is a wager that allows a player to bet that they will be dealt a predetermined and designated qualifying hand, as described below. There will be a distinctively marked area on the table in which a player may place the optional bonus bet.

- A player has to place a base game wager in order to place the Fortune Bonus Bet. Any seated player as well as any backline bettor may place a Fortune Bonus Bet if they have made a base game wager.
- The bonus bet takes into account the first seven cards dealt as a player's hand. In the event that the first seven cards dealt to a player that placed a bonus bet is a predetermined and designated qualifying hand, as described below, the bonus bet will win. The player will then receive a monetary payout based on the bonus hand that the player has received and the paytable, as shown below. Any other combination of the first seven cards dealt, other than the hands described below, will lose.
- The bonus bet may win regardless of the outcome of the base game wager.
- The player-dealer will pay all winning Fortune Bonus Bets and will collect all losing Fortune Bonus Bets. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.
- Winning Fortune Bonus Bets will be paid according to the table, as shown below.

Envy Bonus

A player who places a wager of at least $5 on the Fortune Bonus Bet will receive an Envy button and may qualify for the Envy Bonus payout if another player receives a predetermined and designated qualifying hand, as shown below. One player per seated position will be eligible to receive an Envy button.

- The Envy Bonus takes into account the first seven cards dealt as a player's hand.
- In the event that the first seven cards dealt to a player is a predetermined and designated qualifying hand, as shown below, all players with an Envy button will win.
- Players are not eligible to win an Envy Bonus for their own hand.
- If multiple players have made a seven-card qualifying Fortune Bonus Bet and Envy Bonus hand, then all players with an Envy button will win, other than for their own hand.
- If multiple Envy Bonus hands are achieved, all players with Envy buttons will be paid for the multiple Envy payouts. However, players are not eligible to win an Envy Bonus for their own hand.
- Players will receive a fixed monetary payout based on the qualifying hand that another player has received and the pay table, as shown below.
- The Envy Bonus may win regardless of the outcome of the Face Up Pai Gow base game wager.
- The player-dealer will pay qualifying Envy Bonuses and will collect Envy buttons that did not qualify to the extent of the player-dealer's wager.
- Qualifying Envy Bonus buttons will be paid according to the table, as shown below.

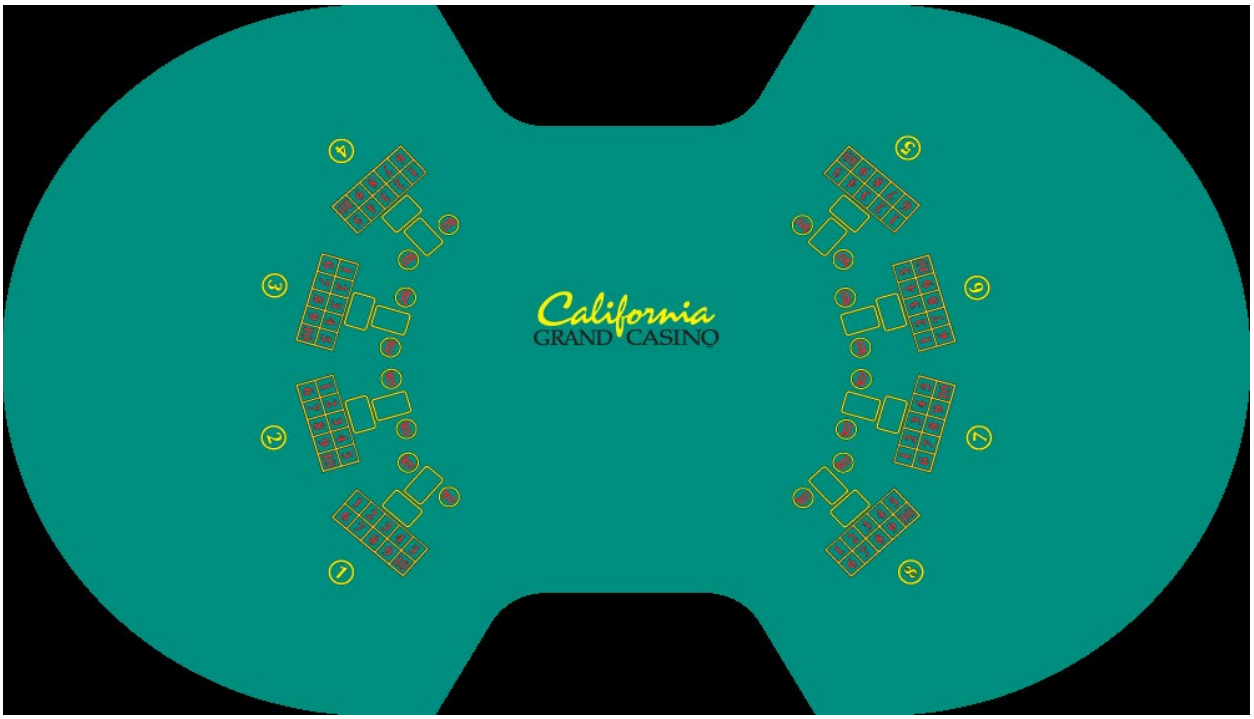
Fortune Bonus and Envy Bet Paytables

The Paytable will be clearly posted at the gaming table.

Hand Dealt	Hand Requirements	Fortune Pays	Envy Pays
Natural Seven Card Straight Flush (No Joker)	A hand that consists of seven cards of the same suit in consecutive ranking that does not utilize a joker.	5,000 to 1	$2500
Royal Flush + Royal Match	A hand that consists of an ace, king, queen, jack and 10 of the same suit and a king and queen of the same suit.	2,000 to 1	$500
Wild Seven Card Straight Flush (With Joker)	A hand that consists of seven cards of the same suit in consecutive ranking that utilizes a joker.	1,000 to 1	$250
Five Aces	A hand that consists of four aces and a joker.	500 to 1	$150
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.	150 to 1	$50
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking.	50 to 1	$20
Four of a Kind	A hand that consists of four cards of the same rank.	25 to 1	$5
Full House	A hand that consists of a Three of a Kind and a Pair.	5 to 1	
Flush	A hand that consists of five cards of the same suit but are not in consecutive ranking.	4 to 1	

Three of a Kind	A hand that consists of three cards of the same rank.	3 to 1	
Straight	A hand that consists of five cards in consecutive ranking, but are not the same suit.	2 to 1	

Table Layout



This is a sample table layout. The game may also be operated on a table with a single staff position on one side and the rest of the table semi-circular without an inset position.

Collection Rates

For table limits and collection rate schedules for the game of Face Up Pai Gow, please refer to the Bureau approved California Games Collection Rates (GEGR-000674).

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF GAMBLING CONTROL
P.O. BOX 168024
SACRAMENTO, CA 95816
(916) 263-1463
Facsimile: (916)732-7987

November 21, 2007

[redacted]

RE: Hot Action Blackjack Modification / California Grand Casino / [redacted]

Dear Mr. [redacted]

The Bureau of Gambling Control (Bureau) has reviewed the California Grand Casino's request to modify the game rules attached to the Bureau approved Hot Action Blackjack. This letter is to inform you that the Bureau has approved this request and the California Grand Casino may incorporate these modifications, as identified below, upon receipt of this letter. This letter of approval shall be kept on file by your gambling establishment and be readily available for review during all hours of operation. Any further changes to the rules of play will constitute a new gaming activity and invalidate this approval.

The Bureau reserves the right to: (1) review the lawfulness of the modified Hot Action Blackjack game; (2) notify all law enforcement agencies and gambling establishments if further review determines the modification made to the games rules of Hot Action Blackjack to be unlawful; (3) require gambling establishments to cease and desist offering for play the modified Hot Action Blackjack game, if found to be unlawful; and (4) take action against those gambling establishments that decline to abide by the Bureau's cease and desist notification.

The details of the modified rules for Hot Action Blackjack, as approved, are as follows:

- The first modification is being made to the Player/Dealer selection. This rule will now be as follows:

  Before any cards are dealt, one position is selected as the player/dealer position. A representative of the house (house dealer) actually deals at all times on behalf of the player/dealer. The house dealer does not receive any cards and does not participate as a player or as the player/dealer. If a player does not wish to be player/dealer the option passes in turn to the next player. The player/dealer position will be rotated or offered to all positions after every two hands.

The second modification is being made to "the play" section of the rules and the change is specific to when the player/dealer does not have a natural two-card hand or the player/dealer doesn't receive his/her second card until all players have finished hitting. The new rules will now be as follows:

- If the player/dealer does not have a Natural Two-Card hand or the player/dealer doesn't receive his/her second card until all players have finished hitting, the house dealer will ask the first player position if he/she wants any additional cards. The player may continue to ask for cards as long as long as the total value of all the player's cards does not equal or exceed hard 18. If the player's hand equals or exceeds hard 18, the player must stop drawing cards. A player may elect to stop drawing cards once his/her hand totals hard 12 or more. Once the first player's hand is no longer eligible to hit, or the player has told the house dealer he/she does not want anymore cards, the next player, in turn, has the right to draw cards. This continues until all players have had one opportunity to draw cards and their hands are no longer eligible to hit or they have refused additional cards. At which time, the player/dealer is eligible to draw cards. The player/dealer must continue to draw cards as long as the total of all the player/dealer's cards does not equal or exceed hard 17. The player/dealer must stand (not draw more cards) on any hand that equals or exceeds 17; except that the player/dealer must draw cards to any hand that totals 17 counting an ace as 11 (the California Grand Casino reserves the right to change the rule to - the player/dealer must stand on soft 17; with notice to the Bureau).

- The third modification is being made to "pair splitting" section of the rules and the change is specific to when the player splits two unsuited aces . The new rules will now be as follows:

  - Players may split any two unsuited Aces originally dealt to them but can only receive one extra card per Ace. The player must place a second wager equal to the wager he/she originally placed prior to the start of the hand.

- All other game rules will remain as previously approved.

- The Contra Costa County ordinance permits the play of Hot Action Blackjack, therefore, this game is in compliance with the local ordinance.

Bureau Regulations 2070, Article 7 subd. (b) states,

"It shall be an unsuitable method of operation for a gambling establishment to:

(b) Offer for play any gaming activity which is not authorized by the Bureau pursuant to the Act and these regulations for play at that gambling establishment;"

Therefore, any changes the California Grand Casino may wish to make in the future to the approved gaming activity, as listed above, must be submitted to the Bureau along with the required $252 fee and will not be authorized until written notification of approval from the Bureau is received.

If you have any questions please contact [redacted], via e-mail at [redacted].

Sincerely,

[redacted]

FOR **DEBBIE MCLAUGHLIN**
Administrator

For **EDMUND G. BROWN JR.**
Attorney General

cc: Donald Van Doorn, Special Agent Supervisor
Compliance and Enforcement Section
Bureau of Gambling Control, Sacramento

Casino War

Type of Game

The game of Casino War utilizes a player-dealer position and is a California game. The player-dealer will collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the respective players. A player will only remain in the player-dealer position for two consecutive rounds of play before it is offered in a clockwise fashion around the gaming table. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

In the game of Casino War, one card is dealt face-up to each player and the player-dealer. The object of the game is for the player to have a card that is higher in rank than the player-dealer's card. Each player also has the option of placing a Tie Wager. If the player and the player-dealer are dealt cards of the same rank, the optional Tie Wager is paid 10 to 1.

Description of the Deck and Number of Decks Used

Shuffling Machine: Cards used to play Casino War will be dealt from an automatic card shuffling device (shuffler). If a shuffle machine is not available or broken, the game will not be offered.

Physical Characteristics: Cards used to play Casino War will be in standard decks of fifty-two (52) cards.

Number of Decks: Cards used to play Casino War will be played with at least twelve (12) decks of cards in accordance with the following requirements:

- The cards will be separated into two batches with an equal number of decks included in each batch.
- The backs of the cards in each batch will be of the same color and design, but of a different color than the cards included in the other batch.
- One batch of the cards will be shuffled and stored in the shuffler while the other batch is being dealt or used to play the game.
- Both batches of cards will be continuously alternated in and out of play, with each batch being used for every other dealing shoe.
- The cards from only one batch will be placed in the discard rack at any given time.

Card Values and Hand Rankings

The rank of the cards used in Casino War will be, in order from the highest to lowest rank: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. All suits will be considered equal in rank.

Description of Table Used and Total Number of Seated Positions

Casino War will be played on a table having betting areas for eight places on one side for the players and the player-dealer. There is a place for the Casino house dealer on the opposite side of the table. Within each betting area, there will be a separate circle for the placement of the Tie Wager.

Dealing Procedures and Round of Play

1. Third Party Providers of Proposition Player Services, as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
2. Backline betting is permitted on any wager.

3. Prior to starting the first round of play after the cards have been cut and placed in the dealing shoe, the house dealer will remove the first card from the shoe face down and, without revealing its rank to anyone, referred to as a “burn card”, and place it in the discard rack, which will be located on the table in front of or to the right of the house dealer. Each new house dealer who comes to the table will also burn one card before dealing any cards in a round of play.
4. At the beginning of each round of play, each player will be required to place a base game wager, keeping in mind the table minimum and maximum wagering limits. All base game wagers will be placed prior to the house dealer announcing "no more bets.”
5. Each player at a Casino War table, who has placed a base game wager, as required above, will also have the option to make the optional Tie Wager. All Tie Wagers will be placed prior to the house dealer announcing "no more bets.”
6. No player will touch any card used in the game of Casino War. other than the cutting card.
7. The house dealer will, starting with the player farthest to the house dealer's left and continuing in a clockwise manner, deal the cards as follows:
   a. One card face-up to each player who has placed a base game wager; and
   b. One card face-up to the player-dealer.
8. After the dealing procedures above have been completed, the house dealer will, beginning from the house dealer's left and proceeding around the table in a clockwise direction, compare the rank of each player's card with that of the player-dealer's card and settle all base game wagers and then all Tie Wagers. No action button will be used.

How Winners are Determined and Paid

1. The following will apply when determining whether the player wins, loses or pushes.
   a. If a player's card is lower in rank than the player-dealer's card, the player will lose their base game wager and, if applicable, their Tie Wager.
   b. If a player's card is higher in rank than the player-dealer's card, the player will win their base game wager and, if applicable, lose their Tie Wager.
   c. If the player's card and the player-dealer's card are of equal rank, the Tie Wager will pay 10 to 1 and the player will be given the following two options:
      i. The player may surrender one-half of their base game wager and end their participation in that round of play. If a player selects this option, the house dealer will collect one-half of the player's base game wager and place it in front of the player-dealer position. The house dealer will return the remaining one-half of the base game wager to the player.
      ii. The player may place a War wager equal to the base game wager. The player-dealer will place a wager equal to the player’s base game wager.
2. All losing base game wagers and Tie Wagers will be collected by the house dealer and placed in front of the player-dealer. All winning base game wagers and Tie Wagers will be paid by the player-dealer.
3. After settling all base game wagers and Tie Wagers, the house dealer will collect the cards of all players except for the cards of those players with a tie and who have elected to go to War. The collected cards will be placed in the discard rack in a manner that permits the reconstruction of each hand of the original deal in case of a question or dispute.
4. If any player elects to make a War wager upon the occurrence of a tie hand, the house dealer will confirm the placement of the War wager and collect the full amount of the player’s base game wager. The player’s card and the player-dealer’s card from the original deal will remain exposed during the War deal.

5. The War deal will begin with the house dealer discarding three burn cards and then dealing the next card face-up to the first active player to the house dealer's left who has placed a War wager. The player's War deal card will be placed on the table adjacent to the player's card from the original deal. The house dealer will then proceed around the table in a clockwise direction, repeating the process for each player who has placed a War wager and the player-dealer.
6. After the dealing procedures above have been completed, the house dealer will, beginning from the house dealer's left and proceeding around the table in a clockwise direction, compare the rank of each player's card from the War deal to the player-dealer's card from the War deal and settle all War wagers.
   a. If the player's card in the War deal is lower in rank than the player-dealer's card in the War deal, the player loses.
   b. If the player's card in the War deal is higher in rank than the player-dealer's card in the War deal, the player will win.
   c. If the player and the player-dealer's cards are of equal rank on the War wager, the player wins and is paid 2 to 1.
7. The player-dealer is never required to cover all opposing players' Casino War wagers. Payoffs of Casino War wagers are limited to the amount of the player-dealer's Casino War wager. The house never participates as a player-dealer. There is no maximum on the player-dealer's Casino War wager.

Bonus Bet

Tie Wager

Each player has the option of placing a Tie Wager. If the player and the player-dealer have the same rank of card, the Tie Wager is paid 10 to 1.

Table Layout

Collection Rates Schedules

For table limits and collection rate schedules for the game of Casino War, please refer to the Bureau approved California Games Collection Rates (GEGR-001299).

Face Up Pai Gow Poker 2.0

Type of Game

The game of Face Up Pai Gow Poker 2.0 utilizes a player-dealer position and is a California game. The position shall be offered systematically and continuously in a clockwise manner around the table every two hands. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the respective players. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

The object of the game of Face Up Pai Gow Poker 2.0 is to make a five-card hand and a two-card hand that ranks higher than the player-dealer's five-card hand and two-card hand. Face Up Pai Gow Poker 2.0 is a Pai Gow Poker variant and plays like conventional Pai Gow Poker, except the player-dealer's hand is exposed first. If the player-dealer has an ace-high hand, "Pai Gow", then all player's hands will push (tie).

Description of the Deck and Number of Decks Used

Face Up Pai Gow Poker 2.0 is played with a standard 52-card deck including a joker for a total of 53 cards. Cards may be dealt using either a manual hand shuffle or an automated shuffling machine.

Card Values and Hand Rankings

The rank of each card used in Face Up Pai Gow Poker 2.0, in order of highest to lowest rank, will be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. The ace would be considered low any time the ace begins a Straight or a Straight Flush. The joker can be used as an ace or to complete any Straight or Straight Flush. All suits will be considered equal in rank.

The hand rankings for the game of Face Up Pai Gow Poker 2.0, in order of highest to lowest, are as follows:

Face Up Pai Gow Poker 2.0 Hand Rankings Chart

Hand Dealt	Hand Requirements
Five Aces	A hand that consists of four aces and a joker.
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked Straight Flush and a 5, 4, 3, 2 and ace is the lowest ranked Straight Flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked Four of a Kind and four 2s is the lowest ranked Four of a Kind.
Full House	A hand that consists of a Three of a Kind and a Pair. Three aces and two kings is the highest ranked Full House and three 2s and two 3s is the lowest ranked Full House.
Flush	A hand that consists of five cards of the same suit but are not in consecutive ranking. An ace, king, queen, jack and 9 is the highest ranked Flush and a 7, 5, 4, 3 and 2 is the lowest ranked Flush.
Straight	A hand that consists of five cards in consecutive ranking, but are not the same suit. An ace, king, queen, jack and 10 is the highest ranked Straight and a 5, 4, 3, 2 and ace is the lowest ranked Straight.

Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked Three of a Kind and three 2s is the lowest ranked Three of a Kind.
Two Pair	A hand that consists of two Pair. Two aces and two kings is the highest ranked Two Pair and two 3s and two 2s is the lowest ranked Two Pair.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked Pair and two 2s is the lowest ranked Pair.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked High Card hand and 7, 5, 4, 3, and 2 is the lowest ranked High Card hand.

Description of Table Used and Total Number of Seated Positions

Face Up Pai Gow Poker 2.0 is played on a standard Pai Gow Poker table, which seats a maximum of six players including the player-dealer, for a total of seven seated positions. Within each betting area for each seated player, there shall be three separate betting areas representing each players' base game wager, the Fortune Bonus Bet and the Ace Up Bonus Bet. Each betting space at the table has a fixed amount for wagering limits defining the minimum and maximum amounts that may be wagered. Players must bet at least the table minimum.

Dealing Procedures and Round of Play

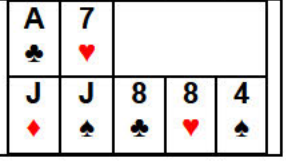
All wagers in Face Up Pai Gow Poker 2.0 will be made by placing casino chips on the appropriate betting areas of the table layout keeping in mind the table minimum and maximum wagering limits.

1. At the start of a game a player is offered the player-dealer position. Once the player-dealer position is accepted, the house dealer shall wait for each player to make their wager in accordance with the table limits.
2. Third-Party Providers of Proposition Player Services (TPPPS), as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
3. Backline betting is permitted on all wagers.
4. Before the start of each hand, each player and the player-dealer place their wagers. Players also have the option of placing a Fortune Bonus Bet or an Ace Up Bonus Bet at this time as well.
5. Once all wagers have been placed, the house dealer will complete the deal of seven piles of cards face-down in front of the house dealer.
    a. Each seven-card hand will be distributed by the shuffle machine and placed on the table by the house dealer, one at a time, from the house dealer's left to right, until all seven hands are dealt.
    b. The house dealer will then spread the remaining cards to verify there are four cards remaining and place them in the discard pile.
6. Should there be the need to deal the game manually (due to machine malfunction, etc.), the following procedure will be followed:
    a. When dealing the seven piles of seven cards, the house dealer will deal one card at a time in front of the house dealer position until there are seven cards, starting from left to right.
    b. Once there are seven cards laid out, the house dealer shall deal each pile another card, from right to left, giving each pile a total of two cards. This process of dealing cards left to right, then right to left, shall be completed until each pile has seven cards.
    c. The remaining four cards shall be placed in the discard pile.

d. Once the cards have been stacked, the player-dealer randomly selects which pile will be distributed to the first player who receives the "Action" button.
e. The house dealer identifies the hand by placing a button marked Action on this pile by pushing the button forward and turning the pile behind it sideways.

7. To determine the placement of the first pile of cards, the player-dealer shakes a dice cup containing three standard dice.
   a. The sum of the dice indicates the seat the pile of cards will be distributed to. The player-dealer's position is always one, eight, and fifteen. Other seats, in clockwise rotation, respectively represent the other numbers.
   b. If the numerical total of the dice represents a seat/spot without any wagers placed, the Action button will be placed at the first active seat/spot clockwise from the original seat/spot.
8. Once all of the piles of cards have been distributed, the house dealer will collect the cards distributed to seats without a wager and place them in the discard pile.
9. The player-dealer's hand will then be exposed and set according to the house way chart below, before the player's sent their hands.
   a. If the player-dealer has an ace-high seven-card hand, all player's wagers shall push and any Ace Up Bonus Bets will win.
   b. If the player-dealer's hand does not contain a seven-card ace-high, each player shall then set their hand by arranging the seven cards into a two-card hand, which is placed in front of the five-card hand, and a five-card hand, which is placed behind the two-card hand.
      i. The five-card hand must rank higher than the two-card hand, according to the hand rankings as shown above.
   c. Players do not have to set their hand the "House Way", they are free to set the hand in any fashion they choose as long as it is not a foul hand. If a player arranges the two-card hand so it out-ranks the five-card hand, this will be considered a foul and the player will automatically lose their wager.

Face Up Pai Gow Poker 2.0 House Way Hand Set

Hand Dealt	House Way	Example
High Card	Put 2nd and 3rd highest cards in front.	
One Pair	Put Pair in back, highest two cards in front.	
Two Pair: High Pair is As, Ks, or Qs	Put small Pair in front.	
Two Pair: High Pair is Js, 10s, or 9s	Put both Pairs in back if an ace can be played in the front, otherwise put small Pair in front.	

Two Pair: **High Pair is 8s, 7s, or 6s**	Put both Pairs in back if a king or higher can be played in the front; otherwise put small Pair in front.	K♠ 9♠ 8♣ 8♦ 4♦ 4♥ 7♣
Two Pair: **High Pair is 5s, 4s, or 3s**	Put both Pairs in back if a queen or higher can be played in the front, otherwise put small Pair in front.	Q♥ 8♣ 5♥ 5♠ 4♥ 4♣ 2♠
Three Pair: **With or without a Straight, Flush, or Straight Flush**	Put highest Pair in front.	9♣ 9♠ 7♦ 7♣ 5♥ 5♠ A♣
Three of a Kind: **Aces**	Put an ace and highest single card in front.	A♣ 8♦ A♦ A♠ 5♦ 4♣ 2♠
Three of a Kind: **Kings and below**	Put two highest single cards in front.	J♥ 10♣ K♥ K♦ K♣ 7♠ 5♥
Two Three of a Kinds	Put highest Pair possible in front.	J♣ J♦ 5♠ 5♥ 5♣ J♠ A♦
Straight, Flush, or Straight Flush with no Pair	Put the highest possible two cards in front that will leave a complete hand in back.	A♠ 9♠ 6♠ 5♠ 4♣ 3♦ 2♠
Straight, Flush, or Straight Flush with one Pair	Put the highest possible two cards (Pair or no Pair) in front that will leave a complete hand in back.	J♥ 8♦ 9♠ 8♥ 6♠ 5♦
Straight, Flush, or Straight Flush with two Pair	Put a Pair in front with a complete hand in back otherwise play Two Pair strategy.	7♦ 7♣ 9♥ 9♦ Q♦ J♦ 4♦
Straight, Flush, or Straight Flush with Three of a Kind	Put Pair or ace in front with complete hand behind.	5♣ 5♥ 7♦ 6♠ 5♦ 4♠ 3♥
Full House with or without a Straight, Flush, or Straight Flush **(Three of a Kind and a Pair)**	Put the highest Pair in front while keeping at least Three of a Kind behind.	4♣ 4♥ 8♥ 8♠ 8♦ A♣ K♥

Four of a Kind As, Ks, or Qs	Split to Pair-Pair.	Q♣ Q♦ / Q♥ Q♠ 9♠ 7♦ 5♣
Four of a Kind: Js, 10s, or 9s	Play Four of a Kind in back if at least a king can be played up front, otherwise split.	J♦ J♠ / J♥ J♣ Q♦ 10♠ 7♥
Four of a Kind: 8s, 7s, or 6s	Play Four of a Kind in back if at least a queen can be played up front, otherwise split.	8♥ 8♦ / 8♣ 8♠ J♣ 7♠ 4♦
Four of a Kind: 5s or below	Always play Four of Kind behind.	9♥ 8♣ / 5♠ 5♦ 5♥ 5♣ 2♠
Four of a Kind with a Pair	Play the Pair in front and play Four of a Kind in back.	4♣ 4♥ / 5♥ 5♦ 5♣ 5♠ 2♠
Five Aces	Play a Pair of aces in front.	A♣ A♠ / A♥ A♦ K♠ 5♣

10. Once the player-dealer's hand is set according to the House Way, each player's hand is exposed, in turn, and compared to the player-dealer's hand to determine the winners, losers, or push hands.
    a. Each player's five-card hand will be compared to the player-dealer's five-card hand, and each player's two-card hand will be compared to the player-dealer's two-card hand, in turn.
11. Wagers will be settled in a clockwise manner around the table, starting with the player with the Action button.
12. All wagers will be settled from seat to seat, including backline bettors, in the following order: the base game wager, then the Fortune Bonus Bet, Envy Bonus and then the Ace Up Bonus Bet. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the respective players.

How Winners are Determined and Paid

Once each player has set their hands and the house dealer has set the player-dealer's hand, each player's hand shall be compared against the player-dealer's hand. The following shall apply for each possible outcome when determining which hand wins, loses, or if there is a "push."

1. The Face Up Pai Gow Poker 2.0 base game wager wins if the two-card hand and the five-card hand, held by the player, ranks higher than the player-dealer's two-card hand and five-card hand. Winning base game wagers are paid 1 to 1.

2. The Face Up Pai Gow Poker 2.0 base game wager loses if the two-card hand and the five-card hand held by the player, ranks lower than the player-dealer's two-card hand and five-card hand.
3. The Face Up Pai Gow Poker 2.0 base game wager "pushes" if one of the hands held by the player ranks higher than the player-dealer's corresponding hand, and the player's other hand ranks lower than the player-dealer's corresponding hand. In this case, neither the player nor the player-dealer wins or loses; the wager is a push and is returned to the player.
4. If either the two-card hand or the five-card hand is identical in rank to the player-dealer's two-card hand or five-card hand, it is a "copy hand." The player-dealer wins all copy hands.
5. When the player-dealer's hand is an ace-high seven-card hand, all player's hands shall push and their wagers shall be returned.
6. Once the standard base game wagers are settled (win, lose, tie/push) the house dealer will determine if the player's hand qualifies for the Fortune Bonus and/or the Envy Bonus.
7. The player-dealer shall pay all winning Fortune Bonus Bets made by players when a player has one of the qualifying hands described below.
8. The player-dealer shall collect all losing Fortune Bonus Bets made by players when a player does not have one of the qualifying hands listed below.
9. A player qualifies for an Envy Bonus payout when a player places a Fortune Bonus Bet of at least $5. The player-dealer shall pay all winning Envy Bonus' when a player at the table receives a Four of a Kind or higher, excluding the player-dealer hand or their own hand.
10. The player-dealer shall pay all winning Ace Up Bonus Bets made by players when the player-dealer's or the player-dealer and player's hand is an ace-high seven-card hand.
11. The player-dealer shall collect all losing Ace Up Bonus Bets made by players when the player-dealer's hand is not an ace-high seven-card hand.

Bonus Bets

Fortune Bonus Bet

For each seated position, there will be one separate and specifically designated area for the placement of a Fortune Bonus Bet.

- A player may only place the optional Fortune Bonus Bet if they have also placed a Face Up Pai Gow Poker 2.0 base game wager prior to the initial deal.
- The Fortune Bonus Bet takes into account all seven cards dealt to a player.
- In the event the seven cards dealt to a player who placed a Fortune Bonus Bet forms a designated qualifying hand, as shown below, the Fortune Bonus Bet shall win.
- The player will then receive a monetary payout based on the bonus hand the player has received and the pay table, as shown below. Any other combination of the first seven cards dealt, other than the hands shown below, will lose.
- There is no opportunity for the Fortune Bonus Bet to tie as it is dependent on the cards dealt as the player's hand, not a comparison of cards or hands.
- The Fortune Bonus Bet remains in action regardless of whether the player's Face Up Pai Gow Poker 2.0 base game wager wins, loses, or pushes.
- The player-dealer will pay qualifying Fortune Bonus Bets and will collect Fortune Bonus Bets to the extent of the player-dealer's wager that did not qualify.

- See the collection rate schedule for restrictions on the amount that may be wagered on the Fortune Bonus Bet and any collections fees that may be taken.

Envy Bonus

A player who places a wager of at least $5 on the Fortune Bonus Bet will receive an Envy button and may qualify for the Envy Bonus payout if another player who placed a Fortune Bonus Bet receives a predetermined and designated qualifying hand, as shown below. Players will receive one Envy button for each Fortune Bonus Bet in an amount equal to or greater than $5.

- The Envy Bonus takes into account the first seven cards dealt as a player's hand.
- In the event that the first seven cards dealt to a player that has placed a Fortune Bonus Bet is a predetermined and designated qualifying hand, as shown below, all players with an Envy button will win.
- Players are not eligible to win an Envy Bonus for their own hand.
- If multiple players have made a seven-card qualifying Fortune Bonus Bet and Envy Bonus hand, then all players with an Envy button will win, other than for their own hand.
- If multiple Envy Bonus hands are achieved, only the highest-ranking hand is awarded the payout. **Example:** *One player achieves a Four of a Kind and another player achieves Five Aces. The Five Aces Envy Bonus is the only bonus payout.*
- Players will receive a fixed monetary payout based on the qualifying hand that another player has received and the pay table, as shown below.
- The Envy Bonus may win regardless of the outcome of the Face Up Pai Gow Poker 2.0 base game wager.
- The player-dealer will pay qualifying Envy Bonuses and will collect Envy buttons that did not qualify to the extent of the player-dealer's wager.
- Qualifying Envy Bonus buttons will be paid according to the table, as shown below.

Fortune Bonus Bet & Envy Bonus Pay Table Options

Hand Dealt	Hand Requirements	Fortune Pays	Envy Pays
7 Card Straight Flush (No Joker)	A hand that consists of seven cards of the same suit in consecutive ranking that does not utilize a joker.	5,000 to 1	$5,000
Royal Flush + Royal Match	A hand that consists of ace, king, queen, jack, 10 and king, queen suited.	2,000 to 1	$1,000
7 Card Straight Flush (With Joker)	A hand that consists of seven cards of the same suit in consecutive ranking that utilizes a joker.	1,000 to 1	$500
Five Aces	A hand that consists of four aces and a joker.	400 to 1	$250
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.	150 to 1	$50
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking.	50 to 1	$20
Four of a Kind	A hand that consists of four cards of the same rank.	25 to 1	$5
Full House	A hand that consists of a Three of a Kind and a Pair.	5 to 1	

Flush	A hand that consists of five cards of the same suit, but that are not in consecutive ranking.	4 to 1	[redacted]
Three of a Kind	A hand that consists	3 to 1	
Straight	A hand that consists of five cards that are in consecutive ranking, but that are not the same suit.	2 to 1	

Ace Up Bonus Bet

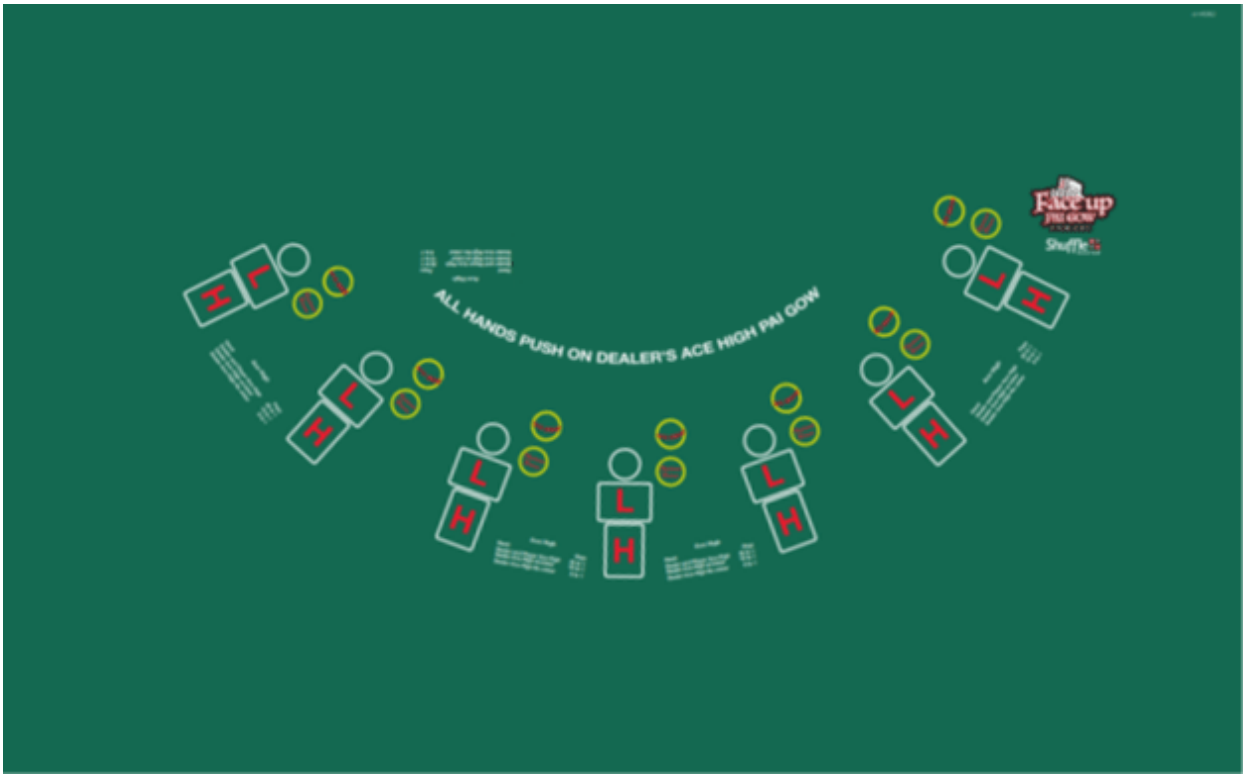
For each seated position, there shall be one separate and specifically designated area for the placement of an Ace Up Bonus Bet.

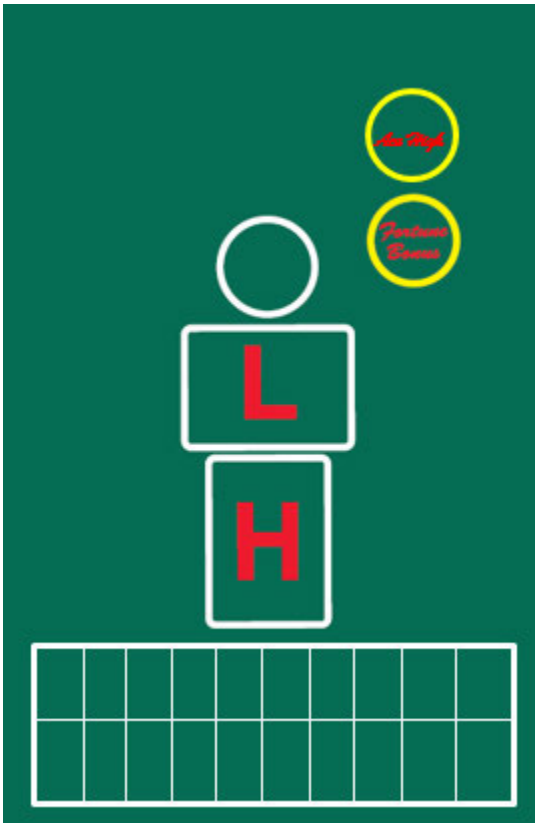
- A player may only place an Ace Up Bonus Bet if they have also placed a base game wager prior to the initial deal.
- See the collection rate schedule for restrictions on the amount that may be wagered on the Ace Up Bonus Bet and any collection fees that may be taken.
- If the player-dealer's or the player-dealer and the player's hand contains a seven-card ace-high hand, the Ace Up Bonus Bet wins.
- The Ace Up Bonus Bet shall lose on all other outcomes.
- The player-dealer shall pay all winning Ace Up Bonus Bet and shall collect all losing Ace Up Bonus Bets. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the players.
- Winning Ace Up Bonus Bets shall be paid according to the pay table, as shown below:

Ace Up Bonus Bet Pay Table

Hand	Payout
Player-Dealer and Player Ace-High	40 to 1
Player-Dealer Ace-High w/Joker	15 to 1
Player-Dealer Ace-High No Joker	5 to 1

Table Layout





Ultimate Texas Hold'em

Type of Game

The game of Ultimate Texas Hold'em is a California game and utilizes a player-dealer position. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players. A player shall only remain in the player-dealer position for two consecutive rounds of play before it is offered in a clockwise fashion around the gaming table. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

The object of the game is for each player to form a five-card hand that ranks higher than the player-dealer's hand.

Players and the player-dealer each receive two "hole" cards. They may use any combination of their two hole cards and the five community cards to make the best five-card hand. Ultimate Texas Hold'em lets players bet aggressively. The earlier they bet, the more they can risk and win.

- If players wager pre-flop, they may wager three times or four times their Ante wager.
- If players wager on the flop, they may bet two times their Ante wager.
- If players wait until the river, when all community cards are displayed, they may only bet the same amount as their Ante wager.

This game also features an optional Trips Bonus Bet and an optional Bad Beat Bonus Bet. The Trips Bonus Bet shall win if the player's five-card hand is a Three of a Kind or better. The Bad Beat Bonus Bet shall win if either the player or player-dealer is beaten by a Three of a Kind or better.

Description of the Deck and Number of Decks Used

- **Physical Characteristics:** Cards shall be in standard decks of fifty-two cards.
- **Number of Decks:** Cards shall be played with two alternating decks, each consisting of fifty-two cards with backs of the same design.
    - The backs of the cards of the two decks are of different color;
    - One deck will be shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;
    - Both decks will be continuously alternated in and out of play, with each deck being used for every other round of play; and
    - The cards from only one deck shall be placed in the discard rack at any given time.

Card Values and Hand Rankings

The rank of the cards used in Ultimate Texas Hold'em, for the purpose of determining a winning hand in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, and 2. All suits shall be considered equal in rank. The ace would be considered low any time the ace begins a Straight or a Straight Flush.

Ultimate Texas Hold'em

The ranking of hands for Ultimate Texas Hold'em in order from highest to the lowest, shall be:

Ultimate Texas Hold'em Hand Rankings

Hand Dealt	Hand Requirements
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked Straight Flush and a 5, 4, 3, 2 and ace is the lowest ranked Straight Flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked Four of a Kind and four 2s is the lowest ranked Four of a Kind.
Full House	A hand that consists of a Three of a Kind and a Pair. Three aces and two kings is the highest ranked Full House and three 2s and two 3s is the lowest ranked Full House.
Flush	A hand that consists of five cards of the same suit, but not in consecutive ranking. An ace, king, queen, jack and 9 is the highest ranked Flush and a 7, 5, 4, 3 and 2 is the lowest ranked Flush.
Straight	A hand that consists of five cards that are in consecutive ranking, but not the same suit. An ace, king, queen, jack and 10 is the highest ranked Straight and a 5, 4, 3, 2 and ace is the lowest ranked Straight.
Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked Three of a Kind and three 2s is the lowest ranked Three of a Kind.
Two Pairs	A hand that consists of two Pairs. Two aces and two kings is the highest ranked Two Pairs and two 3s and two 2s is the lowest ranked Two Pairs.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked Pair and two 2s is the lowest ranked Pair.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked High Card hand and 7, 5, 4, 3 and 2 the lowest ranked High Card hand.

Description of Table Used and Total Number of Seated Positions

Ultimate Texas Hold'em shall be played on a table that accommodates up to six seated players and a player-dealer position, with a place for the house dealer on the opposite side of the table. Each Ultimate Texas Hold'em table shall have a drop box attached to it.

The cloth layout covering the table shall bear an inscription to the effect that the "Player-Dealer Only Plays With a Pair or Higher." The wagering areas shall be designated as follows:

- For Ante wagers, the word "Ante";
- For Blind wagers, the word "Blind";
- For Play wagers, the word "Play";
- For Trips Bonus Bet wagers, the word "Trips"; and
- For Bad Beat Bonus Bet wagers, the words "Bad Beat."

Dealing Procedures and Round of Play

1. Third Party Providers of Proposition Player Services, as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
2. Backline betting is permitted on all wagers.
3. Before the first card is dealt in a round, each player shall be required to make an "Ante" and a "Blind" wager of equal value. Players who place both an Ante and a Blind wager may also place an optional "Trips" Bonus Bet or an optional "Bad Beat" Bonus Bet.
4. The house dealer shall then:
    a. Call "No more bets". No bets shall be made, increased, or withdrawn after the dealer has announced, "No more bets;" and
    b. Starting on their left and continuing clockwise around the table, deal the cards. All cards shall be dealt face down.
5. When a card shoe is used the cards shall be dealt as follows:
        i. One card to each wagering area containing an Ante and Blind wagers and then one card to the player-dealer; followed by
        ii. An additional card to each such wagering area and the player-dealer, so each player and the player-dealer have two cards each; followed by
        iii. Five community cards in the center of the table dealt face down.
6. When an automatic shuffler is used the cards shall be dealt as follows:
        i. Two cards at a time face-down to each wagering area containin an Ante and Blind wager; followed by
        ii. Two cards face-down to the player-dealer; followed by
        iii. Five community cards in the center of the table dealt face down.
7. After the cards have been dealt and delivered to each player and the player-dealer, the dealer shall unload the remaining cards in the shuffler and place them into the discard rack without exposing the cards.
8. After the dealing procedures above have been completed, each player shall examine their cards and decide whether to check (do nothing) or to make a Play wager three or four times the value of their Ante wager. Once a player bets, they cannot bet again and cannot change the bet.
9. When the players have made their wagers (if any), the house dealer shall turn over the first three community cards (the flop).
10. Players who have not already made a Play wager may decide to either check again or to make a Play wager two times the value of their Ante wager.
11. The house dealer shall then turn over the remaining two community cards (the turn and the river).
12. When all five community cards are revealed, players who have not yet made a Play wager can either fold or make a Play wager equal to the value of their Ante wager.
13. A player who decides to fold shall place their cards face down on the table. The house dealer shall then, in relation to each player who has folded:
    a. Collect the Ante and Blind wagers, any Trips Bonus Bet (if the hand is not Three of a Kind or better), and any Bad Beat Bonus Bet on behalf of the player-dealer.
    b. Take the player's cards and individually spread out the cards, face down, and count them; and
    c. Place the cards in the discard rack.
14. For all remaining players, the house dealer will turn over the player-dealer's two cards.
15. Each player's and the player-dealer's two cards will be combined with the five community cards to make the best five-card poker hand. Players may use any combination of their two hole cards and the five community cards to make the best poker hand.

16. The game does not utilize an action button or any other marker to determine which player receives first action on their wager. Action on payouts will always begin with the player to the left of the player-dealer and continue clockwise. Wagers will be settled in a clockwise manner around the table until all wagers have received action to the extent of the player-dealer's wager. All wagers shall be settled from seat to seat, including backline bettors, in the following order: Ante wager, Play wager, Blind wager, Bad Beat Bonus Bet, and Trips Bonus Bet,.
17. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players.

How Winners are Determined and Paid

Once the hands have been completed, according to the guidelines above, the player's wagers are settled. The following shall apply when determining whether the player wins, loses or pushes.

The player-dealer does not qualify

When the player-dealer does **not** have a Pair or higher, the house dealer reconciles the hands of those players who remain in the game as follows:

NOTE: Ultimate Texas Hold'em handles qualifying differently than other games. When the dealer does not qualify, it is not an automatic win for the player.

1. Starting with the player on the house dealer's left, the house dealer shall:
   a. Signal a push for the Ante and return the Ante wager to each player that did not fold;
   b. Reveal the player's cards and resolve the Play, Blind, and Trips Bonus Bets normally (see below);
   c. Collect the Bad Beat Bonus Bet; and
   d. Collect, count and place the player's cards in the discard holder.

The player-dealer qualifies

When the player-dealer's hand has a Pair or higher, the house dealer reconciles the hands of those players who remain in the game as follows:

1. Starting with the player to the left of the player-dealer and continuing clockwise, the house dealer shall:
   a. Reveal the player's cards;
   b. Determine the player's best five-card poker hand utilizing any of the seven cards available (player's two hole cards and five community cards);
   c. Announce the value of the player's hand and whether it wins, loses or pushes.
2. A player's hand shall:
   a. Win if it has a higher ranked hand than the player-dealer's hand;
   b. Lose if it has a lower ranked hand than the player-dealer's hand;
   c. Constitute a push if it has a hand ranking is equal to the player-dealer's hand.
   d. If a player wins with less than a Straight, the Blind bet pushes.
3. If a player's hand loses, the house dealer shall:
   a. Collect on behalf of the player-dealer, in order, the Play, Ante and Blind wagers;
   b. Determine whether the Trips Bonus Bet qualifies and pay accordingly on behalf of the player-dealer or collect the wager on behalf of the player-dealer;
   c. Determine whether the Bad Beat Bonus Bet qualifies and pay accordingly on behalf of the player-dealer or collect the wager on behalf of the player-dealer; and

   d. Collect, count and place the player's cards in the discard holder.
4. If a player's hand wins, the house dealer shall on behalf of the player-dealer:
   a. Pay the Ante and Play wagers on the hand on behalf of the player-dealer;
   b. Pay the Blind wager if the hand is a straight or better on behalf of the player-dealer, (see table below);
   c. Determine whether the Trips Bonus Bet qualifies and pay or collect it accordingly on behalf of the player-dealer, (see table below); and
   d. Determine whether the Bad Beat Bonus Bet qualifies and pay or collect it accordingly on behalf of the player-dealer, (see table below); and
   e. Collect, count and place the player's cards in the discard holder.
5. If a player's hand constitues a push, the house dealer shall:
   a. Pay the Trips Bonus Bet if the hand is a Three of a Kind or better or collect for the player-dealer if the hand is not at least Three of a Kind;
   b. Collect, count and place the player's cards in the discard holder.
6. Winning Ante and Play wagers shall be paid 1 to 1.
7. Winning Blind wagers and Trips Bonus Bets shall be paid in accordance with the paytables below.
8. Where a player has made a Trips Bonus Bet at the beginning of the round and has received a Three of a Kind or higher, the house dealer shall leave the particular cards face up on the table and those cards shall not be collected or discarded until the payout on the hand has been made.
9. If the player receives a Three of a Kind or better, the Trips Bonus Bet payouts are made regardless of whether the hand wins, loses, or pushes. (NOTE: If the player has a Three of a Kind or better, the Trips Bonus Bet always wins – even if the player folds.)

Blind Wager Paytable

Hand	Payout
Royal Flush	500 to 1
Straight Flush	50 to 1
Four of a Kind	10 to 1
Full House	3 to 1
Flush	3 to 2
Straight	1 to 1

Bonus Bet

Trips Bonus Bet

- The Trips Bonus Bet is an optional bet for the game of Ultimate Texas Hold'em.
- Backline betting is permitted on the Trips Bonus Bet.
- Players must place an Ante and a Blind wager prior to the initial deal in order to place a wager on the Trips Bonus Bet.
- The object of the Trips Bonus Bet is to obtain a hand with a Three of a Kind or better, using the player's two cards and the five community cards.
- The Trips Bonus Bet must be placed prior to the intial deal.
- See the collection rate schedule for restrictions on the amount that may be wagered and any collection fees taken on the Trips Bonus Bet.
- If the player's hand qualifies for a payout, the player is paid by the player-dealer according to the paytable below.
- If the player's hand does not qualify for a Trips Bonus Bet payout, the player-dealer collects the Trips Bonus Bet.

- The Trips Bonus Bet may win or lose regardless of the outcome of the base game wager.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.

Trips Bonus Bet Paytable

Hand	Payout
Royal Flush	50 to 1
Straight Flush	40 to 1
Four of a Kind	30 to 1
Full House	8 to 1
Flush	6 to 1
Straight	5 to 1
Three of a Kind	3 to 1

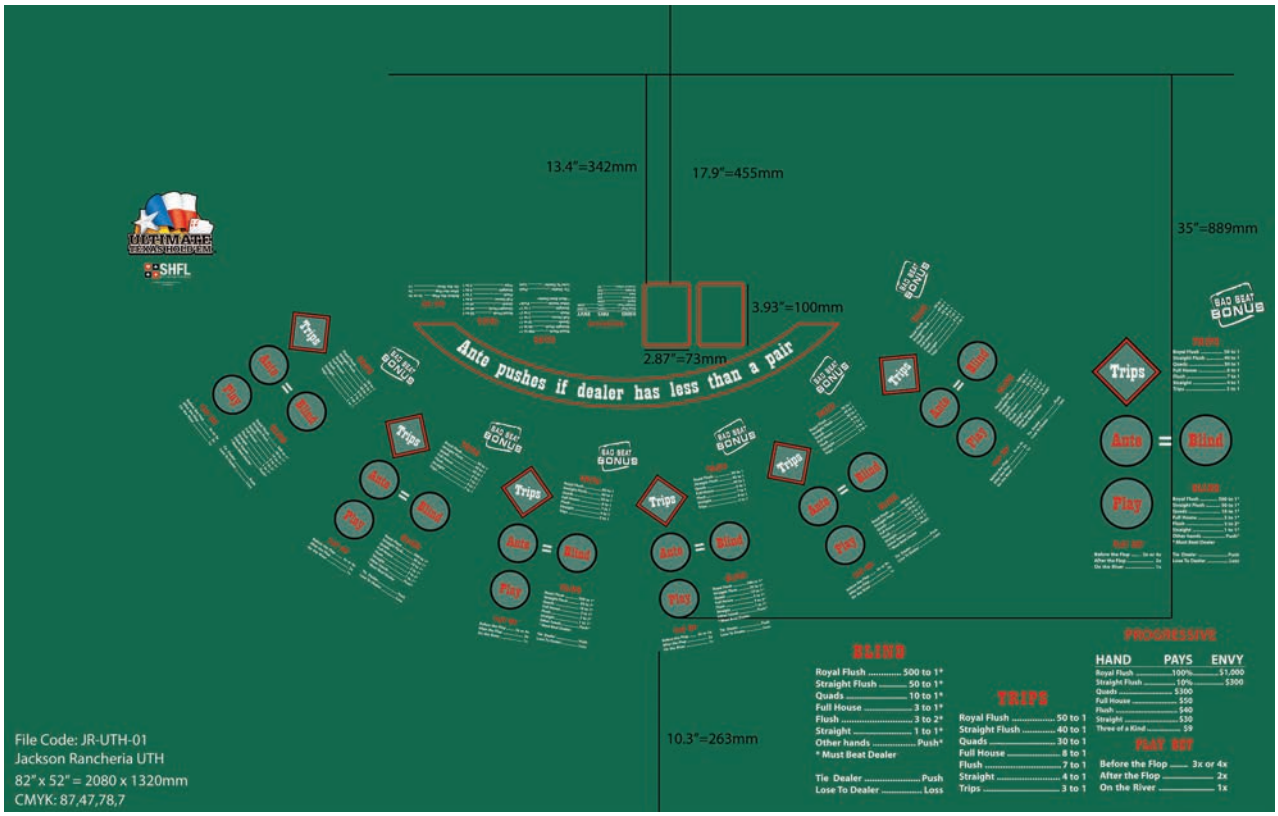
Bad Beat Bonus Bet

- The Bad Beat Bonus Bet is an optional bet for the game of Ultimate Texas Hold'em.
- Backline betting is permitted on the Bad Beat Bonus Bet.
- Players must place an Ante and a Blind wager prior to the initial deal in order to place a wager on the Trips Bonus Bet.
- The Bad Beat Bonus Bet shall win if the player has a Three of a Kind or better and loses to the player-dealer, or if the player-dealer has a Three of a Kind and the player has a higher ranked hand.
- The Bad Beat Bonus Bet shall lose if the player or the player-dealer has a lower ranked hand than a Three of a Kind.
- If the neither the player nor the player-dealer has a Three of a Kind or better, or if the player and the player-dealer's hands push, the Bad Beat Bonus Bets shall lose. There is no opportunity for the Bad Beat Bonus Bet to push.
- The Bad Beat Bonus Bet must be placed prior to the intial deal.
- See the collection rate schedule for restrictions on the amount that may be wagered and any collection fees taken on the Bad Beat Bonus Bet.
- If the player's hand qualifies for a payout, the player is paid by the player-dealer according to the paytable below. The payout shall be based on the lowest hand that is beaten, regardless of whether it is the player or the player-dealer's hand.
- If the player's hand does not qualify for a Bad Beat Bonus Bet payout, the player-dealer collects the Bad Beat Bonus Bet.
- If the player-dealer and the player have a five-card tie, the Bad Beat Bonus Bet loses and is collected by the player-dealer.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.

Bad Beat Bonus Bet Paytable

Hand Beaten	Payout
Straight Flush	7,500 to 1
Four of a Kind	500 to 1
Full House	50 to 1
Flush	30 to 1
Straight	20 to 1
Trips	9 to 1

Table Layout



Collection Rates for California Games

- California games utilize a player-dealer position. The position shall be offered systematically and continuously in a clockwise manner around the table after every two hands.
- All controlled game wagers, including bonus bets, are collected or paid, to the extent that the player-dealer's wager covers.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players.
- The gambling establishment does not participate in the actual play of the game and has no interest in the outcome of the play.
- Only one collection schedule option, which utilizes one table limit and the specified collection fees for that table limit, as listed above, shall be used at a gaming table at any one time.
- Collection rates and fees shall be determined prior to the start of play of any hand or round. Rates shall not be calculated as a fraction or percentage of wagers made or winnings earned.
- Flat fees on wagers may be assessed at different collection rates; however, no more than five collection rates may be established per table.
- Livermore Casino shall provide ample notice to patrons regarding the collection rates and fees, as well as the procedure for collecting them.
- Collection fees shall be conspicuously posted on or within view of every gaming table.

Ultimate Texas Hold'em

Type of Game

The game of Ultimate Texas Hold'em utilizes a player-dealer position and is a California game. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players. A player shall only remain in the player-dealer position for two consecutive rounds of play before it is offered in a clockwise fashion around the gaming table. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

The object of the game is for each player to form a five-card hand that ranks higher than the player-dealer's hand.

Players and the player-dealer each receive two cards, referred to as hole cards. They combine zero, one or two of their hole cards with the five community cards to make their best five-card hand. Ultimate Texas Hold'em lets players bet aggressively. The earlier they bet, the more they can risk and win.

1. If players bet pre-flop, they may bet three times or four times their Ante.
2. If they bet on the flop, they may bet two times their Ante.
3. If they wait until the river, when all community cards are out, they may only bet the same amount as their Ante.

This game also features an optional Trips Bonus Bet. Players win the Trips Bonus Bet if their final five-card hand is a Three of a Kind or better. The game also features an optional Bad Beat Bonus Bet. Players win the Bad Beat Bonus if the player and the player-dealer are involved in a qualifying bad beat hand.

Description of the Deck and Number of Decks Used

1. **Physical Characteristics:** Cards shall be in standard decks of 52 cards.
2. **Number of Decks:** Cards shall be played with two alternating decks, each consisting of 52 cards with backs of the same design.
    a. The backs of the cards of the two decks are of different color.
    b. One deck will be shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game.
        i. If the automated card shuffling device breaks, the house dealer will manually shuffle the cards and use a card shoe.
    c. Both decks will be continuously alternated in and out of play, with each deck being used for every other round of play.
    d. The cards from only one deck shall be placed in the discard rack at any given time.

Card Values and Hand Rankings

The rank of the cards used in Ultimate Texas Hold'em for the purpose of determining a winning hand, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, and 2. All suits shall be considered equal in rank. The ace would be considered low any time the ace begins a Straight or a Straight Flush.

The ranking of Hands for Ultimate Texas Hold'em in order from the highest to the lowest rank, shall be:

Ultimate Texas Hold'em Hand Ranking

Hand Dealt	Hand Requirements
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked Straight Flush and a 5, 4, 3, 2 and ace is the lowest ranked Straight Flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked Four of a Kind and four 2s is the lowest ranked Four of a Kind.
Full House	A hand that consists of a Three of a Kind and a Pair. Three aces and two kings is the highest ranked Full House and three 2s and two 3s is the lowest ranked Full House.
Flush	A hand that consists of five cards of the same suit, but not in consecutive ranking. An ace, king, queen, jack and 9 is the highest ranked Flush and a 7, 5, 4, 3 and 2 is the lowest ranked Flush.
Straight	A hand that consists of five cards that are in consecutive ranking, but not the same suit. An ace, king, queen, jack and 10 is the highest ranked Straight and a 5, 4, 3, 2 and ace is the lowest ranked Straight.
Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked Three of a Kind and three 2s is the lowest ranked Three of a Kind.
Two Pairs	A hand that consists of two Pairs. Two aces and two kings is the highest ranked Two Pairs and two 3s and two 2s is the lowest ranked Two Pairs.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked Pair and two 2s is the lowest ranked Pair.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked High Card hand and 7, 5, 4, 3 and 2 the lowest ranked High Card hand.

*Players do not need to use any of their hole cards to form a hand.

Description of Table Used and Total Number of Seated Positions

Ultimate Texas Hold'em shall be played on a table having seven places on one side for the players and the player-dealer and a place for the house dealer on the opposite side of the table. Each Ultimate Texas Hold'em table shall have a drop box attached to it.

The cloth layout covering the table shall bear an inscription to the effect that the "Player-Dealer Only Plays with a Pair or Higher."

The wagering areas shall be designated as follows:

- For Ante wagers, the word "Ante";
- For Blind wagers, the word "Blind";
- For Bad Beat Bonus Bets, the word "Bad Beat";
- For Trips Bonus Bet, the word "Trips"; and
- For Play wagers, the word "Play."

Dealing Procedures and Round of Play

All wagers in Ultimate Texas Hold'em shall be made by placing gaming chips on the appropriate betting areas of the table layout, keeping in mind the table minimum and maximum wagering limits.

Ultimate Texas Hold'em

1. At the start of the game a player is offered the player-dealer position. Once the player-dealer position is accepted, the house dealer shall wait for each player to make their wager in accordance with the table limits.
2. Third-Party Providers of Proposition Player Services, as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
3. Before the first card is dealt in a round of play, each player may place equal Ante and Blind wagers, in the appropriate betting areas.
    a. Each player who has placed the required Ante and Blind wagers, mentioned above, will have the option to place an additional Trips Bonus Bet and/or Bad Beat Bonus Bet.
    b. Players are permitted to play only bonus bets.
4. Backline betting is permitted.
5. Immediately before the start of each round of play and after all Ante and Blind wagers, and any Trips Bonus Bet and/or Bad Beat Bonus Bet have been made, the house dealer shall:
    a. Call "No more bets," no bets shall be made, increased, or withdrawn after the dealer has announced, "No more bets;" and then
    b. Starting on their left and continuing clockwise around the table, deal the cards.
6. All cards shall be dealt face-down.
    a. When a card shoe is used, the cards shall be dealt as follows:
        i. Five community cards in the center of the table dealt face-down; followed by
        ii. One card to each wagering area containing an Ante and Blind wagers and/or Bonus Bets and then one card to the player-dealer; followed by
        iii. A further card to each such wagering area and the player-dealer, so each player and the player-dealer have two cards each.
    b. When an automatic shuffler is used, the cards shall be dealt as follows:
        i. Five community cards in the center of the table dealt face-down; followed by
        ii. Two cards at a time to each wagering area containing an Ante and Blind wagers and/or Bonus Bets; followed by
        iii. Two cards to the player-dealer.
7. After the cards have been dealt and delivered to each player and the player-dealer, the house dealer shall unload the remaining cards in the shuffler and place them into the discard rack without exposing the cards.
    a. When handling the cards, players shall at all times ensure that the cards remain on or above the area of the table.
    b. The cards must not be removed from the table.
8. After the dealing procedures above have been completed, each player shall examine their cards and decide whether to check (do nothing) or to make a Play wager three or four times the value of their Ante wager. Once a player bets, they cannot bet again and cannot change the bet.
9. When the players have made their wagers (if any), the house dealer shall proceed to turn over the first three community cards.
10. Players who have not already made a Play wager may decide to either check again or to make a Play wager two times the value of their Ante wager.
11. The house dealer shall proceed to turn over the remaining two community cards (the turn and the river).
12. When all five community cards are revealed, players who have not yet made a Play wager can either fold or make a Play wager equal to the value of their Ante wager.
13. A player who decides to fold shall place their cards face-down on the table. The house dealer shall then, in relation to each player who has folded:

   a. Collect the Ante wager, Blind wager, and any Trips Bonus Bet (if the hand is not a Three of a Kind or better) on behalf of the player-dealer;
      i. If the hand is a Three of a Kind or better, the Trips Bonus Bet will not be collected.
   b. Take the player's cards and individually spread out the cards, face-down, and count them; and
   c. Place the cards in the discard rack.
      i. If the player placed a Trips Bonus Bet and the hand is a Three of a Kind or better the house dealer will leave cards, face up on the table, and will not collect or discard them until payout on the hand has been made.
      ii. If the player placed a Bad Beat Bonus Bet, the house dealer will leave cards, face up on the table, and will not collect or discard them until it is determined whether the player was involved in a qualifying bad beat hand.
14. For all remaining players, the house dealer will turn over the player-dealer's two cards.
15. Each player and the player-dealer will combine zero, one, or two of their hole cards with the five community cards to make the best five-card poker hand.
16. The action on payouts will always begin with the player to the left of the player-dealer position and continue clockwise.
17. All wagers shall be settled from seat to seat in the following order: Play, Ante, Blind wagers, Trips Bonus Bet and then the Bad Beat Bonus Bet.
    a. Backline bettors will be paid immediately after the seated player they are behind and before the next seated player.
18. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players.

How Winners are Determined and Paid

Once the hands have been completed, according to the guidelines above, the player's wagers are settled. The following shall apply when determining whether the player wins, loses or pushes.

The player-dealer does not qualify when the player-dealer does **not** have a Pair or higher, the house dealer reconciles the hands of those players who remain in the game in the following way:

NOTE: Ultimate Texas Hold'em handles qualifying differently than other games when the player-dealer does not qualify, it is not an automatic win for the player.

1. Starting with the player on the player-dealer's left, the house dealer shall:
   a. Expose each player's cards, signal a push for the Ante and return the Ante wager to each player that did not fold;
   b. Resolve the Play, Blind, and Trips Bonus Bets and Bad Beat Bonus Bets normally (see below "When player-dealer qualifies"); and
   c. Collect, count and place the player's cards in the discard holder.

The player-dealer qualifies when the player-dealer's hand has a pair or higher, the house dealer reconciles the hands of those players who remain in the game in the following way:

1. Starting with the player to the left of the player-dealer, the house dealer will:
   a. Bring the player's cards into the "work area" between the player-dealer's hand and the Bad Beat Bonus Bet area and reveal the player's cards;
   b. Determine the player's best five-card poker hand;

   c. Compare the player's hand with the player-dealer's; and announce the value of the player's hand and whether it wins or loses.
2. A player's hand shall:
   a. Win if it has a higher value than the player-dealer's hand;
   b. Lose if it has a lower value than the player-dealer's hand;
   c. Constitute a push if it has a value equal to the player-dealer's hand.
   d. If a player wins with less than a Straight, the Blind bet pushes.
3. If a player's hand loses, the house dealer shall:
   a. Collect on behalf of the player-dealer, in order, the Play, Ante and Blind wagers;
   b. Determine whether the Trips Bonus Bet and Bad Beat Bonus Bet qualifies and pay accordingly on behalf of the player-dealer or collect the wager on behalf of the player-dealer; and
   c. Collect, count and place the player's cards in the discard holder.
4. If a player's hand wins, the house dealer shall on behalf of the player-dealer:
   a. Pay the Ante and Play wagers on the hand;
   b. Pay the Blind wager if the hand is a Straight or better, see Blind pay table;
   c. Determine whether the Trips Bonus Bet and Bad Beat Bonus Bet qualifies and pay accordingly, see Trips Bonus pay table and Bad Beat Bonus pay table; and
   d. Collect, count and place the player's cards in the discard holder.
5. If a player's hand constitutes a push, the house dealer shall:
   a. Pay the Trips Bonus Bet if the hand is a Three of a Kind or better or collect for the player-dealer if the hand is not a Three of a Kind or better;
   b. Collect the Bad Beat Bonus Bet on behalf of the player-dealer; and
   c. Collect, count and place the player's cards in the discard holder.
6. Winning Ante and Play wagers shall be paid 1 to 1.
7. Winning Blind wager, Trips Bonus Bet, and Bad Beat Bonus Bet shall be paid in accordance with the approved pay table for the cardroom (see table below).
8. If the player receives a Three of a Kind or higher, the Trips Bonus Bet payouts are made regardless of whether the hand wins, loses, or pushes. (NOTE: If the player has a Three of a Kind or better, the Trips Bonus Bet always wins – even if the player folds.)
9. The player-dealer is never required to cover all opposing players' wagers. Payoffs of wagers are limited to the amount of the player-dealer wager. The house never participates as the player-dealer. The house never takes a percentage of wagers placed in the game. There is no maximum on the player-dealer's wager.

Blind Pay Table

Hand	Payout
Royal Flush	500 to 1
Straight Flush	50 to 1
Four of a Kind	10 to 1
Full House	3 to 1
Flush	3 to 2
Straight	1 to 1

Bonus Bets

Trips Bonus Bet

The Trips Bonus Bet is an optional bet for the game of Ultimate Texas Hold'em where player's are betting that their hand will contain a Three of a Kind or better. The rules are as follows:

- The player combines their hole cards with the five community cards to form a hand of Three of a Kind or better.
- The Trips Bonus Bet must be placed prior to the initial deal.
- Backline betting is permitted on the Trips Bonus Bet.
- See the collection rate schedule for restrictions on the amount that may be wagered and any collection fees taken on the Trips Bonus Bet.
- The Trips Bonus Bet may win or lose regardless of the outcome of the base game wager.
- If the player's hand qualifies for a payout, the player is paid by the player-dealer, according to the table shown below.
- If the player's hand does not qualify for a Trips Bonus Bet payout, the player-dealer collects the Trips Bonus Bet.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.

Trips Bonus Pay Table

Hand	Payout
Royal Flush	50 to 1
Straight Flush	40 to 1
Four of a Kind	30 to 1
Full House	8 to 1
Flush	7 to 1
Straight	4 to 1
Three of a Kind	3 to 1

Bad Beat Bonus Bet

The Bad Beat Bonus Bet is an optional bet for the game of Ultimate Texas Hold'em. Players win if the player and the player-dealer are involved in a bad beat. There are two ways to win:

1. The player has Three of a Kind or better and loses to the player-dealer.
2. The player beats the player-dealer's hand of Three of a Kind or better, using the player's two cards and the five community cards.

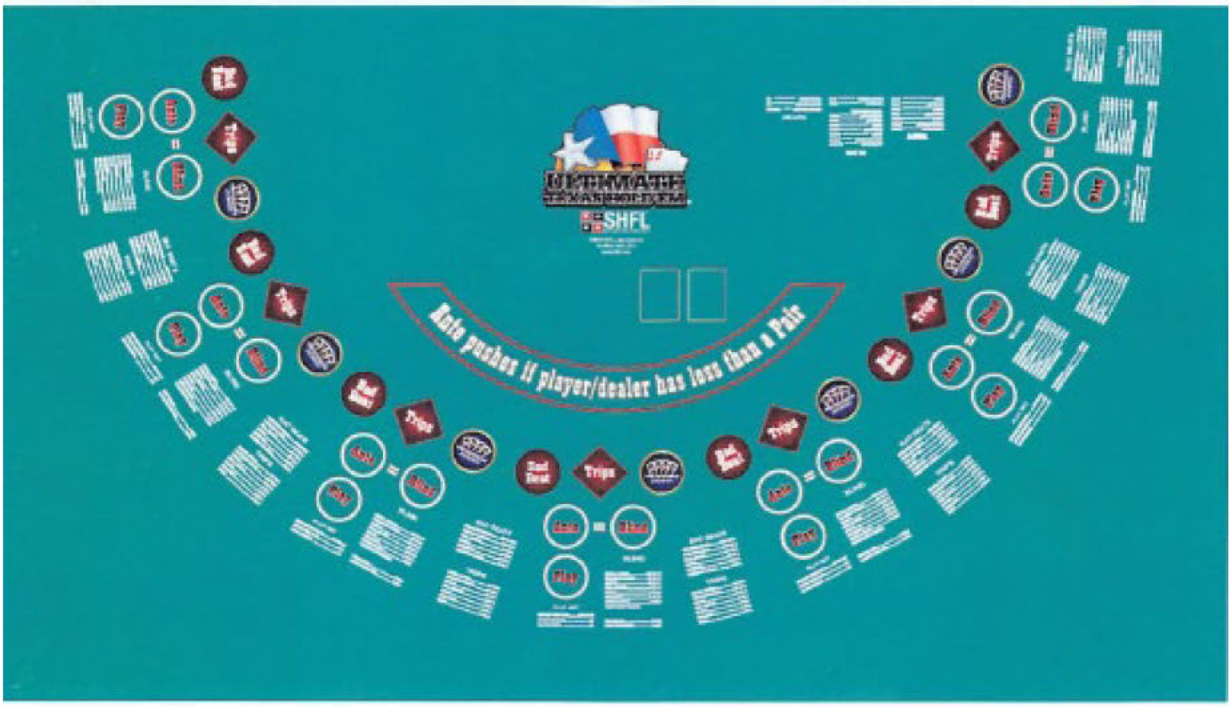
- If the player's hand qualifies for payouts, the player-dealer pays them according to the posted table. If the player's hand does not qualify, the player-dealer takes their wager and moves on to the next player.
- If the player-dealer and the player have a five-card tie; then the Bad Beat Bonus Bet loses as neither the player-dealer nor the player suffered a bad beat.
- The Bad Beat Bonus Bet must be placed prior to the initial deal.
- Backline betting is permitted on the Bad Beat Bonus Bet.
- See the collection rate schedule for restrictions on the amount that may be wagered and any collection fees taken on the Bad Beat Bonus Bet.

- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.

Bad Beat Bonus Pay Table

Hand	Payout
Straight Flush	7500 to 1
Four of a Kind	500 to 1
Full House	50 to 1
Flush	30 to 1
Straight	20 to 1
Three of a Kind	9 to 1

Table Layout



Collection Rates Schedule

For wagering limits and collection rates for the game of Ultimate Texas Hold'em, please refer to the California Game Collection Rates (GEGR-001537).

Ace Up Pai Gow Poker

Type of Game

The game of Ace Up Pai Gow Poker utilizes a player-dealer position and is a California game. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players. A player shall only remain in the player-dealer position for two consecutive rounds of play before it is offered in a clockwise fashion around the gaming table. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

The object of the game of Ace Up Pai Gow Poker is to make a five-card hand and a two-card hand that ranks higher than the player-dealer's five-card hand and two-card hand. Ace Up Pai Gow Poker is a Pai Gow Poker variant and plays like conventional Pai Gow Poker, except the player-dealer's hand is shown first. In addition, when the player-dealer's hand is shown and the ranking is a seven-card ace-high hand, then all player hands will automatically push (tie) and the players' base game wagers will be returned to the players.

Description of the Deck and Number of Decks Used

Ace Up Pai Gow Poker is played with a standard 52-card deck including a joker for a total of 53 cards. Cards may be dealt using either a manual hand shuffle or an automated shuffling machine.

Card Values and Hand Rankings

The rank of each card used in Ace Up Pai Gow Poker, in order of highest to lowest rank, will be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3 and 2. The ace would be considered low any time the ace begins a Straight or a Straight Flush. The joker can be used as an ace or to complete any Straight or Straight Flush. All suits will be considered equal in rank.

The hand rankings for the game of Ace Up Pai Gow Poker, in order of highest to lowest, are as follows:

Hand Dealt	Hand Requirements
Five Aces	A hand that consists of four aces and a joker.
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked Straight Flush and a 5, 4, 3, 2 and ace is the lowest ranked Straight Flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked Four of a Kind and four 2s is the lowest ranked Four of a Kind.
Full House	A hand that consists of a Three of a Kind and a Pair. Three aces and two kings is the highest ranked Full House and three 2s and two 3s is the lowest ranked Full House.
Flush	A hand that consists of five cards of the same suit but are not in consecutive ranking. An ace, king, queen, jack and 9 is the highest ranked Flush and a 7, 5, 4, 3 and 2 is the lowest ranked Flush.
Straight	A hand that consists of five cards in consecutive ranking, but are not the same suit. An ace, king, queen, jack and 10 is the highest ranked Straight and a 5, 4, 3, 2 and ace is the lowest ranked Straight.

Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked Three of a Kind and three 2s is the lowest ranked Three of a Kind.
Two Pair	A hand that consists of two Pair. Two aces and two kings is the highest ranked Two Pair and two 3s and two 2s is the lowest ranked Two Pair.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked Pair and two 2s is the lowest ranked Pair.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked High Card hand and 7, 5, 4, 3, and 2 is the lowest ranked High Card hand.

Description of Table Used and Total Number of Seated Positions

Ace Up Pai Gow Poker is played on a standard Pai Gow Poker table, which seats a maximum of six players and a player-dealer, for a total of seven seated positions. Within each betting area for each seated player, there shall be three separate betting areas representing each players' base game wager, the Lucky Bonus Bet and the Ace Up Bonus Bet. Each betting space at the table has a fixed amount for wagering limits defining the minimum and maximum amounts that may be wagered. Players must bet at least the table minimum.

Dealing Procedures and Round of Play

All wagers in Ace Up Pai Gow Poker will be made by placing casino chips on the appropriate betting areas of the table layout keeping in mind the table minimum and maximum wagering limits.

1. At the start of a game a player is offered the player-dealer position. Once the player-dealer position is accepted, the house dealer shall wait for each player to make their wager in accordance with the table limits.
    a. Each player then has the following option(s) when placing their wager(s):
        i. The base game which pays 1 to 1;
        ii. The Lucky Bonus Bet which pays according to the paytable, as shown below;
        iii. The Ace Up Bonus Bet which pays according to the paytable, as shown below.
2. Third-Party Providers of Proposition Player Services (TPPPS), as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
3. Backline betting is permitted on all wagers.
4. Once all wagers have been placed, the cards will be shuffled and dealt to players in the following way.
    a. If the cards are hand shuffled then the house dealer will shuffle, cut, and complete the deal of seven piles of seven cards face-down in front of them. When dealing the seven piles of seven cards, the house dealer shall deal one card at a time in front of the house dealer position until there are seven cards, starting from left to right. Once there are seven cards laid out, the house dealer shall deal each pile another card, from right to left, giving each pile a total of two cards. This process of dealing cards left to right, then right to left, shall be completed until each pile has seven cards. The remaining four cards shall be placed in the discard pile.
        i. The player-dealer then selects one of the seven piles.
        ii. The action button, which determines the first player to receive first action from the player-dealer, is placed on the selected pile and will be the first hand distributed once the placement of the action button has been determined.

iii. To determine who receives the action button, the player-dealer shakes a dice cup, which contains three dice, and the numerical total of the three dice determines the position of the action button. The player-dealer's position is always one, eight, and fifteen.
iv. Once the first position is determined, the house dealer then distributes the seven piles of cards, starting with the action button and continuing clockwise.
v. The player-dealer receives their cards in turn according to the action.
vi. All seven piles of cards will be distributed to all seats at the table, regardless of whether a player is seated at each position or a wager has been placed. The house dealer will then spread the remaining cards to verify there are four cards remaining and placed in the discard pile.

b. If a machine shuffler is used, the house dealer will use the shuffle machine to randomly intermix and deliver seven cards to each seat.
i. The action button, which determines the first player to receive first action from the player-dealer, is placed on the selected pile and will be the first hand distributed once the placement of the action button has been determined.
ii. To determine who receives the action button, the player-dealer shakes a dice cup, which contains three dice, and the numerical total of the three dice determines the position of the action button. The player-dealer's position is always one, eight, and fifteen.
iii. Once action is determined, the house dealer will deliver the first seven cards to the action seat and continue clockwise around the table.
iv. Each seven-card hand will be distributed by the shuffle machine and placed on the table by the house dealer, one at a time, from the house dealer's left to right, until all seven hands are dealt. The house dealer will then spread the remaining cards to verify there are four cards remaining and placed in the discard pile.

5. The player-dealer's hand will then be exposed and set <u>before</u> the players set their hands.
a. If the player-dealer has an ace-high seven-card hand, all player's wagers shall automatically push and any Ace Up Bonus Bets will win.
b. If the player-dealer's hand does not contain a seven-card ace-high hand, each player shall then set their hand by arranging the seven cards in to a two-card hand, which is placed in front of the five-card hand, and a five-card hand, which is placed behind the two-card hand.
i. The five-card hand must rank higher than the two-card hand, according to the hand rankings, as shown above.
ii. The player-dealer has the option to ask the house dealer to set their hand according to the House Way chart.
c. Players do not have to set their hand the "House Way", they are free to set the hand in any fashion they choose as long as it is not a foul hand. If a player arranges the two-card hand so it out-ranks the five-card hand, this will be considered a foul and the player will automatically lose their wager.
6. Once the player-dealer's hand is set, each player sets their hands by arranging the seven cards into a two-card hand in front, and a five-card hand in back.
a. The five-card hand must rank higher than the two-card hand, according to the hand rankings, as shown above.
b. The player-dealer has the option to ask the house dealer to set their hand according to the House Way chart below.
7. Once the player's hands are set, each player's hand is exposed, in turn, and compared to the player-dealer's hands to determine the winners, losers, or push hands.

8. Each player's five-card hand will be compared to the player-dealer's five-card hand, and each player's two-card hand will be compared to the player-dealer's two-card hand, in turn.
9. Wagers will be settled in a clockwise manner around the table, starting with the player with the Action button.
10. All wagers will be settled from seat to seat (including backline betters) in the following order: the base game wager, then the Lucky Bonus Bet, and then the Ace Up Bonus Bet. However, if the money covers, the house dealer may begin the resolution of wagers in any order. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the respective players.

Ace Up Pai Gow Poker House Way Hand Set

Hand Dealt	House Way	Example
High Card	Put 2nd and 3rd highest cards in front.	K♦ J♣ / A♥ 10♣ 7♠ 5♥ 3♦
One Pair	Put Pair in back, highest two cards in front.	A♣ Q♦ / 3♠ 3♣ J♥ 8♦ 4♣
Two Pair: High Pair is As, Ks, or Qs	Put small Pair in front.	3♦ 3♠ / K♥ K♠ 7♥ 6♣ 2♦
Two Pair: High Pair is Js, 10s, or 9s	Put both Pairs in back if an ace can be played in the front, otherwise put small Pair in front.	A♣ 7♥ / J♦ J♠ 8♣ 8♥ 4♠
Two Pair: High Pair is 8s, 7s, or 6s	Put both Pairs in back if a king or higher can be played in the front; otherwise put small Pair in front.	K♠ 9♠ / 8♣ 8♦ 4♦ 4♥ 7♣
Two Pair: High Pair is 5s, 4s, or 3s	Put both Pairs in back if a queen or higher can be played in the front, otherwise put small Pair in front.	Q♥ 8♣ / 5♥ 5♠ 4♥ 4♣ 2♠
Three Pair: With or without a Straight, Flush, or Straight Flush	Put highest Pair in front.	9♣ 9♠ / 7♦ 7♣ 5♥ 5♠ A♣
Three of a Kind: Aces	Put an ace and highest single card in front.	A♣ 8♦ / A♦ A♠ 5♦ 4♣ 2♠

Ace Up Pai Gow Poker

Three of a Kind: Kings and below	Put two highest single cards in front.	J♥ 10♣ / K♥ K♦ K♣ 7♠ 5♥
Two Three of a Kinds	Put highest Pair possible in front.	J♣ J♦ / 5♠ 5♥ 5♣ J♠ A♦
Straight, Flush, or Straight Flush with no Pair	Put the highest possible two cards in front that will leave a complete hand in back.	A♠ 9♠ / 6♠ 5♠ 4♣ 3♦ 2♠
Straight, Flush, or Straight Flush with one Pair	Put the highest possible two cards (Pair or no Pair) in front that will leave a complete hand in back.	J♥ 8♦ / 9♠ 8♥ 6♠ 5♦
Straight, Flush, or Straight Flush with two Pair	Put a Pair in front with a complete hand in back otherwise play Two Pair strategy.	7♦ 7♣ / 9♥ 9♦ Q♦ J♦ 4♦
Straight, Flush, or Straight Flush with Three of a Kind	Put Pair or ace in front with complete hand behind.	5♣ 5♥ / 7♦ 6♠ 5♦ 4♠ 3♥
Full House with or without a Straight, Flush, or Straight Flush. (Three of a Kind and a Pair)	Put the highest Pair in front while keeping at least Three of a Kind behind.	4♣ 4♥ / 8♥ 8♠ 8♦ A♣ K♥
Four of a Kind As, Ks, or Qs	Split to Pair-Pair.	Q♣ Q♦ / Q♥ Q♠ 9♠ 7♦ 5♣
Four of a Kind: Js, 10s, or 9s	Play Four of a Kind in back if at least a king can be played up front, otherwise split.	J♦ J♠ / J♥ J♣ Q♦ 10♠ 7♥
Four of a Kind: 8s, 7s, or 6s	Play Four of a Kind in back if at least a queen can be played up front, otherwise split.	8♥ 8♦ / 8♣ 8♠ J♣ 7♠ 4♦
Four of a Kind: 5s or below	Always play Four of Kind behind.	9♥ 8♣ / 5♠ 5♦ 5♥ 5♣ 2♠

Four of a Kind with a Pair	Play the Pair in front and play Four of a Kind in back.	4♣ 4♥ 5♥ 5♦ 5♣ 5♠ 2♠
Five Aces	Play a Pair of aces in front.	A♣ A♠ A♥ A♦ K♠ 5♣

How Winners are Determined and Paid

Once each player has set their hands and the house dealer has set the player-dealer's hand, each player's hand shall be compared against the player-dealer's hand. The following shall apply for each possible outcome when determining which hand wins, loses, or if there is a push.

1. The base game wager wins if the two-card hand and the five-card hand, held by the player, ranks higher than the player-dealer's two-card hand and five-card hand.
2. The base game wager loses if the two-card hand and the five-card hand held by the player, ranks lower than the player-dealer's two-card hand and five-card hand.
3. The base game wager "pushes" if one of the hands held by the player ranks higher than the player-dealer's corresponding hand, and the player's other hand ranks lower than the player-dealer's corresponding hand. In this case, neither the player nor the player-dealer wins or loses; the wager is a push and is returned to the player.
   a. The base game wager also "pushes" if the ranking of the player-dealer's shown hand is a seven-card ace-high hand. Neither the player nor the player-dealer wins or loses; the wager is a push and is returned to the player.
4. If either the two-card hand or the five-card hand is identical in rank to the player-dealer's two-card hand or five-card hand, it is a "copy hand." The player-dealer wins all copy hands.
5. The player-dealer will collect losing Lucky Bonus Bets and pays winning Lucky Bonus Bets to the extent of the player-dealer's wager.
6. The cards are collected, shuffled, and a new round begins.

Bonus Bets

Lucky Bonus Bet

The Lucky Bonus Bet is an optional bonus bet that complements the game of Ace Up Pai Gow Poker, as listed above. It is a wager that allows a player to bet that they will be dealt a pre-determined and designated qualifying hand, as described below. There will be a distinctively marked circle on the table in which a player may place the optional bonus bet.

- A player does not have to place a base bet in order to place a Lucky Bonus Bet. Furthermore, the wager must be placed prior to the initial deal.
- Any seated player as well as any backline bettor may place a Lucky Bonus Bet.
- The Lucky Bonus Bet may be less than, equal to, or may exceed the base game wager. However, it may not exceed the table limit.

- The bonus bet takes into account the first seven cards dealt as a player's hand. In the event that the first seven cards dealt to a player that placed a bonus bet is a pre-determined and designated qualifying hand, as described below, the bonus bet will win. The player will then receive a monetary payout based on the bonus hand that the player has received and the paytable, as shown below. Any other combination of the first seven cards dealt, other than the hands described below, will lose.
- The bonus bet may win regardless of the outcome of the base game wager.
- The player-dealer will pay all winning Lucky Bonus bets and will collect all losing Lucky Bonus bets. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.
- Winning Lucky Bonus bets will be paid according to the table, as shown below.

Lucky Bonus Bet Paytable

Hand Dealt	Hand Requirements	Fortune Pays
Natural Seven Card Straight Flush (No Joker)	A hand that consists of seven cards of the same suit in consecutive ranking that does not utilize a joker.	2,000 to 1
Royal Flush + Royal Match	A hand that consists of an ace, king, queen, jack and 10 of the same suit and a king and queen of the same suit.	1,000 to 1
Wild Seven Card Straight Flush (With Joker)	A hand that consists of seven cards of the same suit in consecutive ranking that utilizes a joker.	500 to 1
Five Aces	A hand that consists of four aces and a joker.	250 to 1
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.	100 to 1
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking.	25 to 1
Four of a Kind	A hand that consists of four cards of the same rank.	15 to 1
Full House	A hand that consists of a Three of a Kind and a Pair.	10 to 1
Flush	A hand that consists of five cards of the same suit but are not in consecutive ranking.	4 to 1
Three of a Kind	A hand that consists of three cards of the same rank.	3 to 1
Straight	A hand that consists of five cards in consecutive ranking, but are not the same suit.	1 to 1

Ace Up Bonus Bet

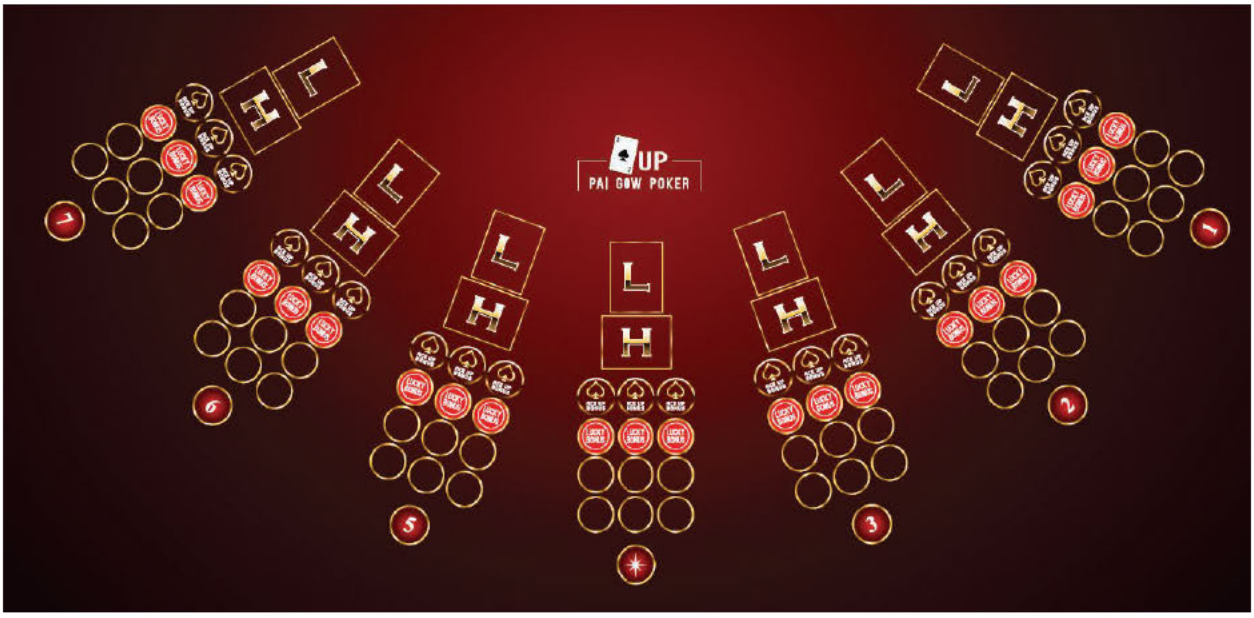
The Ace Up Bonus Bet is an optional bonus bet that allows a player to bet that they and the player-dealer will be dealt a predetermined and designated qualifying hand, as described below. There will be a distinctively marked circle on the table in which a player may place the optional bonus bet.

- A player does not have to place a base game wager in order to place the Ace Up Bonus Bet. Furthermore, the wager must be placed prior to the initial deal.
- The Ace Up Bonus Bet may be less than, equal to, or may exceed the base game wager. However, it may not exceed the table limit.

- The Ace Up Bonus Bet takes into account the first seven cards dealt as a player's hand and the player-dealer's hand. In the event that the first seven cards dealt to a player that placed a bonus bet and the player-dealer's hand is a predetermined and designated qualifying hand, as described below, the bonus bet will win. The player will then receive a monetary payout based on the bonus hand that the player has received and the paytable, as shown below. Any other combination of the first seven cards dealt, other than the hands described below, will lose.
- There is no additional collection fee for placing the Ace Up Bonus Bet.
- The player-dealer will pay all winning Ace Up Bonus Bets and will collect all losing Ace Up Bonus Bets. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.
- Winning Ace Up Bonus Bets will be according to the table, as shown below.

Player and Player-Dealer Ace High Card Hand	40 to 1
Player-Dealer Ace High Card Hand (with Joker)	15 to 1
Player-Dealer Ace High Card Hand (No Joker)	5 to 1

Table Layout



Collection Rates Schedules

For **schedule options 1 through 4**, the Player-Dealer Fee shall be taken per hand from the player-dealer position. Additionally, the Player Fee shall be taken from each seated player and backline bettor for each base game wager they place based on the amount of each wager. There will be no collection fee taken for placing a bonus bet. The Lucky Bonus Bet and the Ace Up Bonus Bet may be less than, equal to, or greater than the base game wager, but must be within the table limits. The collection fees shall be taken and dropped by the house dealer prior to cards being dealt or any round of play being conducted.

Minimum wagering limits per spot shall be between $5 and $200
Maximum wagering limits per spot shall be between $100 and $1,000

Schedule Option	Player Wager Per Spot	Player Fee	Player-Dealer Fee
1	$10 - $200	$1	$1
2	$5 - $100	$1	$2
	$101 - $200	$2	
	$201 - $300	$3	
	$301 - $400	$4	
	$401 - $500	$5	
3	$10 - $100	$1	$2
	$101 - $200	$2	
	$201 - $300	$3	
	$301 - $400	$4	
	$401 - $1,000	$5	
4	$25 - $100	$1	$3
	$101 - $200	$2	
	$201 - $300	$3	
	$301 - $400	$4	
	$401 - $1,000	$5	

For **schedule options 5 through 19**, the Player-Dealer Fee shall be taken per hand from the player-dealer position based on the total monetary value of all base game wagers and bonus bets placed before the initial deal, referred to as "Total Table Action." There shall be no collection fee taken from any player or backline bettor for placing a base game wager or bonus bet. The Lucky Bonus Bet and the Ace Up Bonus Bet may be less than, equal to, or greater than the base game wager, but must be within the table limits. The collection fees shall be taken and dropped by the house dealer prior to cards being dealt or any round of play being conducted.

Minimum wagering limits per spot shall be between $5 and $100
Maximum wagering limits per spot shall be between $100 and $1,000

Schedule Option	Total Table Action	Player-Dealer Fee	Player Fee
5	$10 - $100	$1	$0
	$101 - $300	$2	
	$301 - $500	$3	
	$501 - $700	$5	
	$701+	$8	

Ace Up Pai Gow Poker

6	$5 - $100	$3	$0
	$101 - $300	$5	
	$301 - $500	$7	
	$501 - $800	$10	
	$801+	$15	
7	$5 - $100	$2	$0
	$101 - $400	$5	
	$401 - $800	$10	
	$801 - $1,500	$15	
	$1,501+	$20	
8	$5 - $100	$3	$0
	$101 - $400	$5	
	$401 - $800	$8	
	$801 - $1,500	$15	
	$1,501+	$25	
9	$10 - $100	$2	$0
	$101 - $400	$5	
	$401 - $800	$10	
	$801 - $1,500	$15	
	$1,501+	$20	
10	$10 - $100	$3	$0
	$101 - $400	$5	
	$401 - $800	$8	
	$801 - $1,500	$15	
	$1,501+	$25	
11	$10 - $100	$2	$0
	$101 - $400	$4	
	$401 - $1,000	$8	
	$1001 - $1,500	$20	
	$1,501+	$25	
12	$5 - $100	$4	$0
	$101 - $500	$7	
	$501 - $1,000	$12	
	$1,001 - $2,000	$20	
	$2,001+	$30	
13	$10 - $100	$2	$0
	$101 - $500	$5	
	$501 - $1,000	$10	
	$1,001 - $2,000	$15	
	$2,001+	$25	
14	$10 - $100	$4	$0
	$101 - $500	$7	
	$501 - $1,000	$12	
	$1,001 - $2,000	$20	
	$2,001+	$30	

15	$10 - $300	$2	$0
	$301 - $600	$3	
	$601 - $1,000	$6	
	$1,001 - $2,000	$8	
	$2,001+	$12	
16	$10 - $300	$1	$0
	$301 - $600	$3	
	$601 - $1,000	$6	
	$1,001 - $2,000	$10	
	$2,001+	$15	
17	$100 - $500	$5	$0
	$501 - $1,000	$10	
	$1,001 - $1,500	$15	
	$1,501 - $2,000	$20	
	$2,001+	$25	
18	$100 - $500	$5	$0
	$501 - $1,000	$10	
	$1,001 - $2,000	$20	
	$2,001 - $2,500	$25	
	$2,501+	$30	
19	$100 - $500	$3	$0
	$501 - $1,000	$8	
	$1,001 - $2,000	$15	
	$2,001 - $2,500	$20	
	$2,501+	$25	

Collection Procedures

- California games utilize a player-dealer position. The position shall be offered systematically and continuously in a clockwise manner around the table after every two hands.
- All base game wagers, including bonus bets, are collected or paid, to the extent that the player-dealer's wager covers.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players.
- The gambling establishment does not participate in the actual play of the game and has no interest in the outcome of the play.
- Only one collection schedule option, which utilizes one table limit and the specified collection fees for that table limit, as listed above, shall be used at a gaming table at any one time.
- Collection rates and fees shall be determined prior to the start of play of any hand or round. Rates shall not be calculated as a fraction or percentage of wagers made or winnings earned.
- Flat fees on wagers may be assessed at different collection rates; however, no more than five collection rates may be established per table.
- The Casino shall provide ample notice to patrons regarding the collection rates and fees, as well as the procedure for collecting them.
- Collection fees shall be conspicuously posted on or within view of every gaming table.

BLACKJACK X

Object of the Game

The object of the game is to play to 31. The Player hopes to be dealt a "Natural" which is the Top Ranked Hand. The Players and the Player Dealer add the numerical value of their initial two-cards and compare them against each other. In the event the Player Dealer is dealt a "Natural" the game stops, and the Hands are compared. If the Player is not dealt a two-card thirty-one (31) then the Player will play to Hard thirty-one and if not, then the Player will try to get as close to twenty-one.

The Player's hand is frozen from receiving an additional Draw card when their hand total is between 22 and 30. After the Draw the Player will lose their original wager with a hand value between 22 and 30 and Win on a value of 31 no matter the value of the Player Dealers hand.

♣ A Natural consists of an Ace card and a 10-point card when the first two hands are dealt.

♣ A "Blackjack X" consists of an Ace/King of Spades.

♣ All cards have face value. Face cards have a value of 10.

♣ If the Player Dealer does not have a Natural the Players will have the option to Double Down, Hit, Split, Surrender, or Stand depending on the value of their hand.

♣ The Player must stand on a Natural, and a Hand that totals between 22 and 30. The Player has an option when their hand total is between 2 and 21.

♣ Player Dealer must hit soft 17 and stands on Hard 17 or above.

Hand Ranking

1. Natural 31
2. "Blackjack X"
3. Hard 31
4. A hand totaling a 21
5. A hand totaling a 20
6. A hand totaling a 19
7. A hand totaling a 18
8. A hand totaling a 17
9. A hand totaling a 16
10. A hand totaling a 15
11. A hand totaling a 14
12. A hand totaling a 13
13. A hand totaling a 12
14. A hand totaling a 11
15. A hand totaling a 10
16. A hand totaling a 9
17. A hand totaling a 8
18. A hand totaling a 7
19. A hand totaling a 6
20. A hand totaling a 5
21. A hand totaling a 4
22. A hand totaling a 3

23. A hand totaling a 2
24. A hand totaling a 22 - 30

Game Rules

A standard deck of cards with no Joker is used in the play of the game. The Deck will contain a total of 52-cards. The game can be played with a minimum of one (1) and a maximum of eight (8) decks. All Aces of spade will have an "x" stamped on the card.

The game plays to 31 which can be achieved either on the initial two-card deal by being dealt a standard Ace card along with a 10-point card or by hitting to 31 while trying to avoid landing on a hand that totals between 22 and 30. The best hand is referred to as a "Natural 31" and is accomplished when the player or player-dealer's initial two (2) card hand consists of a standard ace and a ten (10) point card. The second best hand is a two-card hand that consists of an Ace and King suited. If the player is not dealt a two-card hand of thirty-one (31), the player will try to achieve either a hard thirty-one (31), which is the third best hand, or a hand of twenty-one (21), which is the fourth best hand. Both the Player and the Player-Dealer's hand are frozen from taking additional Hit cards when their hand value is between 22 and 30. When exceeding twenty-one, the Player will win on Hard (31) and will lose on any other total, no matter the value of the Player Dealer hand. The Players will have the option to Stand, Split, take Insurance, Double Down, Surrender or Hit provided the Player Dealer is not dealt a two-card 31. A hard hand is any hand that the minimum value is more than 11. Minimum value means there are aces in the hand and using all the aces as 1 instead of 11's the hand is 12 or more, or it would be any hand that if were to receive another 10 would bust over 22.

A hard 31 would be a hand that the player hits a hard 21 and receives a 10. This is the only way that hand could be achieved.

When both the Player and the Player Dealers hand value is between 22 and 30 they are frozen from taking additional Hit cards. When exceeding twenty-one, the Player will win on Hard (31) and will lose on any total between 22 and 30, no matter the value of the Player Dealer hand.

Rules for the Player Dealer:

- Player Dealer hits on soft seventeen and below.
- Play Dealer stands on Hard seventeen and above.

Rules for the Player:

- The Player has an option on hands that total between 2 and 21.
- The Player must stand on a natural or a hand with a value between 22 and 30.

Game options:

- Odds
  - A Natural 31 will be paid 6:5
  - A Hard 31 will be paid 3:1
  - A "Blackjack X" will be paid 2:1
  - All other winning player hands will be paid 1:1
- Split
  - The Player may split any two cards of equal value.
  - Player may split three times for a total of four hands.
  - Split Aces receive one hit card.
  - The Player may not re-split aces.
  - Split Aces after the Draw that receives a 10-point card have a value of 21 and are paid even money if not pushed.
- Double Down
  - The Player may receive only one hit card after Doubling Down.
  - The Player may double on any two cards, except a "Natural 31."

  - The player may place a second wager that is less than or equal to the game wager that was originally placed prior to the start of the game, as long as it is within the table limits.
  - The Player may double down after the split.
- Surrender
  - The Player may surrender before the Dealer checks the Player Dealers hole card.
  - The Player may forfeit half their wager when surrendering.
  - Players may only surrender prior to taking a hit.
  - The Player may surrender after the split.
- Insurance
  - Insurance will only be offered when the Player Dealer is showing an Ace card.
  - The Player may put up a bet that totals between 1% and 50% of the initial wager and place it in front of the original wager.
  - The Players that placed an insurance bet will be considered to have pushed and will not lose if the Player Dealer is dealt a Natural.
  - The Player will be paid 2:1 on their Insurance wager if the Player Dealer has a Natural and lose their initial wager unless the Player was also dealt a Natural.
  - The Player will lose their Insurance wager if the Player Dealer does not have Natural and play out their original wager.
  - Insurance wager is compared against the Player Dealers after the initial wager.

Dealer Procedures

1. The Cards will be shuffled before being placed into a shoe or random shuffling machine. The Dealer will begin the game by burning a card.
2. The Dealer will first start by asking the Player starting from seat one if they would like to occupy the Player Dealer position.
3. The Dealer will ask for bets.
4. Once the Player / Dealer position is filled then at least one Player must place a wager to start the game.
5. The Dealer deals a total of two cards to the Player face up and two cards to the Dealer, the first card face up and the second card face down.
   a. At this point the Player will be offer the Option to surrender unless the Player Dealers up Card is an Ace then the Player will be offered the Option to take Insurance as well.
   b. In the event the Player Dealer is dealt a “Natural,” the game stops, there is no Draw and the hands are compared. A Natural beats all hands. The Player and the Player Dealer ties on all Naturals.
6. The Players will have the opportunity to act on their hand.
   a. After the Draw, if the Player totals 31 they will win their original wager provided the Dealer is not dealt a natural.
   b. The Player loses on a hand with a value between 22 and 30.
   c. The player wins if their hand total is closer to thirty-one without totaling a hand between 22 and 30. The Player loses if the Player Dealer is closer. If both the Player and the Player Dealer are dealt a Hand of equal value then the wager is a push.
7. Once the Dealer’s hand is concluded the round is over.
8. The Dealer will then compare the bets placed by the Player who is occupying the House position to see if the Player wins, loses, or ties and completes the payoffs. If the Player wins the Dealer will pay the Player with monies from the Player occupying the Player Dealer position.

Buster Blackjack

US Patent 6,845,981

Rules of Play

Buster Blackjack Bonus Bet

- For each seated position, there shall be one separate and specifically designated area for the placement of a Buster Blackjack Bonus Bet. A player may only place a Buster Blackjack Bonus Bet if they have also placed a game wager prior to the initial deal. Furthermore, a player may place one bonus bet wager for each base game wager placed if multiple betting circles are utilized.
- Seated players as well as back-line bettors may place a Buster Blackjack Bonus Bet wager.
- The Buster Blackjack Bonus Bet wagers may be less than or equal to, but may not exceed the game wager.
- Once all players have made their decisions regarding their hand, according to the base game rules above, the player-dealer shall reveal their face-down card and complete the hand. The payoff odds vary based on the number of cards in the player-dealer's busted hand. The more cards in the busted hand, the higher the payoff. If the player-dealer's hand busts, all Buster Blackjack Bonus Bet wagers shall be paid according to the posted pay table, as shown below. If the player-dealer does not bust, all Buster Blackjack Bonus Bet wagers shall be collected in rotation to the extent of the money in action. There is no opportunity for the Buster Blackjack Bonus Bet wager to tie as it is dependent on the cards dealt to the player-dealer's hand, not a comparison of cards or hands.
- A Buster Blackjack Bonus Bet wager remains in action regardless of whether the player wins or loses the base game wager. The player-dealer must always complete their hand as long as there are bonus bets in play.
- The player-dealer shall pay all winning Buster Blackjack Bonus Bet wagers and shall collect all losing Buster Blackjack Bonus Bet wagers. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the players.
- Winning Buster Blackjack Bonus Bet wagers shall be paid according to the table, as shown below.

Buster Blackjack Bonus Bet Pay Table

Number of Cards in the Player-dealer's Busted Hand	Payout
3	2 to 1
4	2 to 1
5	4 to 1
6	15 to 1
7	50 to 1
8 or more	200 to 1

Lucky Pair Bonus Bet

A distinct area of the felt in front of each player will be allowed to place an optional bonus bet where if they are dealt any pair, their bet will be paid 10 to 1. The bets will be in line with the posted table minimum and maximums.

Lucky Pair Bonus Bet

- For each seated position, there shall be one separate and specifically designated area for the placement of a Lucky Pair Bonus Bet. A player may only place a Lucky Pair Bonus Bet if they have also placed a game wager prior to the initial deal. Furthermore, a player may place one bonus bet wager for each base game wager placed if multiple betting circles are utilized.
- Seated players as well as backline bettors may place a Lucky Pair Bonus wager.
- The Lucky Pair wagers may be less than or equal to, or more than the base game wager as long as it is within the table limits.
- If the player is dealt any pair in the first two cards that they are dealt they will win the bonus wager. Any additional pairs dealt after the first two shall not win the Lucky Pair Bonus wager.
- A Lucky Pair wager remains in action regardless of whether the player wins or loses the base game wager. The player-dealer must always complete their hand as long as there are bonus bets in play.
- The player-dealer shall pay all winning Lucky Pair wagers and shall collect all losing Lucky Pair wagers. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the players.
- Winning Lucky Pair wagers shall be paid 10 to 1.
- The Lucky Pair Bonus pays 40:1 if a player has a pair and the player-dealer has a Natural.

California Game

The game of Blackjack X utilizes a player-dealer position and is a California game. The position shall be offered systematically and continuously in a clockwise manner around the table after every two hands. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players. The gambling establishment does not participate in the actual play of the game and has no interest in the outcome of the play.

Wagering Limits and Collection Fees

Although the Bureau has approved these collection rates, games offering a zero collection are currently under Bureau review. The Bureau reserves the right to: (1) review the lawfulness of the game of Blackjack X; (2) notify all law enforcement agencies and gambling establishments if further review determines the modified game of Blackjack X to be unlawful; (3) require gambling establishments to cease and desist offering the game of Blackjack X if found to be unlawful; and (4) take action against those gambling establishments that decline to abide by the Bureau's cease and desist notification.

For schedule options 1 through 15, the collection fees shall be taken per hand from the player-dealer position based on the total of each wager placed. There is no collection fee taken when a player places a wager, doubles-down, splits cards, surrenders their hand, places an insurance wager, places a Buster Blackjack Bonus Bet wager, or places an Lucky Pair Bonus Bet wager. The collection fees shall be collected and dropped by the casino dealer after each player has placed their wagers but prior to cards being dealt or any round of play being conducted. The collection fees shall be pre-determined and conspicuously posted on each table prior to any cards being dealt or a round of play commencing. Only one collection schedule, which utilizes one table limit and the specified collection fees for that table limit, as listed below, shall be used at a table at any one time. Furthermore, the collection rates may not be calculated as a portion of wagers made or winnings earned. The approved collection fees and schedules for the game of Blackjack X are as shown below:

Schedule Option	Wager Limit Per Betting Circle/Square	Total Table Action	Player-Dealer Fee	Player Fee
1	$5- $500	$5 - $100	$1.00	$0.00
		$101 - $200	$2.00	
		$201 - $300	$3.00	
		$301 - $600	$5.00	
		$601 +	$8.00	
2	$25- $1,000	$25 - $100	$1.00	$0.00
		$101 - $200	$2.00	
		$201 - $300	$3.00	
		$301 - $600	$5.00	
		$601 +	$8.00	
3	$100- $1,000	$100	$1.00	$0.00
		$101 - $200	$2.00	
		$201 - $300	$3.00	
		$301 - $600	$5.00	
		$601 +	$8.00	
4	$5- $500	$5 - $100	$1.00	$0.00
		$101 - $200	$3.00	
		$201 - $300	$4.00	
		$301 - $600	$5.00	
		$601 +	$8.00	
5	$25- $1,000	$25 - $100	$1.00	$0.00
		$101 - $200	$3.00	
		$201 - $300	$4.00	
		$301 - $600	$5.00	
		$601 +	$8.00	
6	$100- $1,000	$100	$1.00	$0.00
		$101 - $200	$3.00	
		$201 - $300	$4.00	
		$301 - $600	$5.00	
		$601 +	$8.00	
7	$5- $500	$5 - $100	$2.00	$0.00
		$101 - $200	$3.00	
		$201 - $300	$5.00	
		$301 - $600	$7.00	
		$601 +	$10.00	
8	$25- $1,000	$25 - $100	$2.00	$0.00
		$101 - $200	$3.00	
		$201 - $300	$5.00	
		$301 - $600	$7.00	
		$601 +	$10.00	

9	$100- $1,000	$100	$2.00	$0.00
		$101 - $200	$3.00	
		$201 - $300	$5.00	
		$301 - $600	$7.00	
		$601 +	$10.00	
10	$5- $500	$5 - $100	$1.00	$0.00
		$101 - $300	$3.00	
		$301 - $600	$6.00	
		$601 - $1,000	$10.00	
		$1,001 +	$15.00	
11	$25- $1,000	$25 - $100	$1.00	$0.00
		$101 - $300	$3.00	
		$301 - $600	$6.00	
		$601 - $1,000	$10.00	
		$1,001 +	$15.00	
12	$100- $1,000	$100	$1.00	$0.00
		$101 - $300	$3.00	
		$301 - $600	$6.00	
		$601 - $1,000	$10.00	
		$1,001 +	$15.00	
13	$5- $1,000	$5 - $100	$2.00	$0.00
		$101 - $300	$4.00	
		$301 - $600	$7.00	
		$601 - $1,000	$11.00	
		$1,001 +	$16.00	
14	$25- $1,000	$25 - $100	$2.00	$0.00
		$101 - $300	$4.00	
		$301 - $600	$7.00	
		$601 - $1,000	$11.00	
		$1,001 +	$16.00	
15	$100- $1,000	$100	$2.00	$0.00
		$101 - $300	$4.00	
		$301 - $600	$7.00	
		$601 - $1,000	$11.00	
		$1,001 +	$16.00	

Ultimate Texas Hold'em

Type of Game

The game of Ultimate Texas Hold'em utilizes a player-dealer position and is a California game. The player-dealer shall collect all losing wagers, pay all winning wagers, and may not win or lose more than the original amount wagered. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players. A player shall only remain in the player-dealer position for two consecutive rounds of play before it is offered in a clockwise fashion around the gaming table. The gambling enterprise does not participate in the actual play of the game and has no interest in the outcome of the play.

Object of the Game

The object of the game is for each player to form a five-card hand that ranks higher than the player-dealer's hand.

Players and the player-dealer each receive two cards, referred to as hole cards. They combine with the five community cards to make their best five-card hand. Ultimate Texas Hold'em lets players bet aggressively. The earlier they bet, the more they can risk and win.

1. If players bet pre-flop, they may bet three times or four times their Ante.
2. If they bet on the flop, they may bet two times their Ante.
3. If they wait until the river, when all community cards are out, they may only bet the same amount as their Ante.

This game features an optional Trips Bonus Bet. Players win the Trips Bonus Bet if their final five-card hand is a Three of a Kind or better. The game also features an optional Bad Beat Bonus Bet. Players win the Bad Beat Bonus if the player and the player-dealer are involved in a qualifying bad beat hand.

Description of the Deck and Number of Decks Used

1. **Physical Characteristics:** Cards shall be in standard decks of 52 cards.
2. **Number of Decks:** Cards shall be played with two alternating decks, each consisting of 52 cards with backs of the same design.
    a. The backs of the cards of the two decks are of different color.
    b. One deck will be shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game.
        i. If the automated card shuffling device breaks, the house dealer will manually shuffle the cards and use a card shoe.
    c. Both decks will be continuously alternated in and out of play, with each deck being used for every other round of play.
    d. The cards from only one deck shall be placed in the discard rack at any given time.

Card Values and Hand Rankings

The rank of the cards used in Ultimate Texas Hold'em for the purpose of determining a winning hand, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, and 2. All suits shall be considered equal in rank. The ace would be considered low any time the ace begins a Straight or a Straight Flush.

The ranking of Hands for Ultimate Texas Hold'em in order from the highest to the lowest rank, shall be:

Ultimate Texas Hold'em Hand Ranking

Hand Dealt	Hand Requirements
Royal Flush	A hand that consists of an ace, king, queen, jack and 10 of the same suit.
Straight Flush	A hand that consists of five cards of the same suit in consecutive ranking. A king, queen, jack, 10 and 9 is the highest ranked Straight Flush and a 5, 4, 3, 2 and ace is the lowest ranked Straight Flush.
Four of a Kind	A hand that consists of four cards of the same rank. Four aces is the highest ranked Four of a Kind and four 2s is the lowest ranked Four of a Kind.
Full House	A hand that consists of a Three of a Kind and a Pair. Three aces and two kings is the highest ranked Full House and three 2s and two 3s is the lowest ranked Full House.
Flush	A hand that consists of five cards of the same suit, but not in consecutive ranking. The value of the highest card in the hand shall decide the ranking between two flushes, and where the highest cards in both hands are the same value, the next card and so on.
Straight	A hand that consists of five cards that are in consecutive ranking, but not the same suit. An ace, king, queen, jack and 10 is the highest ranked Straight and a 5, 4, 3, 2 and ace is the lowest ranked Straight.
Three of a Kind	A hand that consists of three cards of the same rank. Three aces is the highest ranked Three of a Kind and three 2s is the lowest ranked Three of a Kind.
Two Pairs	A hand that consists of two Pairs. Two aces and two kings is the highest ranked Two Pairs and two 3s and two 2s is the lowest ranked Two Pairs.
One Pair	A hand that consists of two cards of the same rank. Two aces is the highest ranked Pair and two 2s is the lowest ranked Pair.
High Card	A hand that consists of five cards that do not make any of the hands listed above. An ace, king, queen, jack and 9 is the highest ranked High Card hand and 7, 5, 4, 3 and 2 the lowest ranked High Card hand.

*Players do not need to use any of their hole cards to form a hand.

Description of Table Used and Total Number of Seated Positions

Ultimate Texas Hold'em shall be played on a table having seven places on one side for the players and the player-dealer and a place for the house dealer on the opposite side of the table. Each Ultimate Texas Hold'em table shall have a drop box attached to it.

The cloth layout covering the table shall bear an inscription to the effect that the "Player-Dealer Only Plays with a Pair or Higher."

The wagering areas shall be designated as follows:

- For Ante wagers, the word "Ante";
- For Blind wagers, the word "Blind";
- For Bad Beat Bonus wagers, the word "Bad Beat"
- For Trips Bonus Bet, the word "Trips"; and
- For Play wagers, the word "Play."

Dealing Procedures and Round of Play

All wagers in Ultimate Texas Hold'em shall be made by placing gaming chips on the appropriate betting areas of the table layout, keeping in mind the table minimum and maximum wagering limits.

1. At the start of the game a player is offered the player-dealer position. Once the player-dealer position is accepted, the house dealer shall wait for each player to make their wagers in accordance with the table limits.
2. Third-Party Providers of Proposition Player Services, as defined in Section 19984 of the California Business and Professions Code, are permitted to play.
3. Before the first card is dealt in a round of play, each player may place equal Ante and Blind wagers, in the appropriate betting areas.
    a. Each player who has placed the required Ante and Blind wagers, mentioned above, will have the option to place an additional Trips Bonus Bet and/or Bad Beat Bonus Bet.
    b. Players are permitted to play only bonus wagers.
4. Backline betting is permitted on all wagers.
5. Immediately before the start of each round of play and after all Ante and Blind wagers, and any Trips Bonus Bet and/or Bad Beat Bonus Bet have been made, the house dealer shall:
    a. Call "No more bets," no bets shall be made, increased, or withdrawn after the dealer has announced, "No more bets."
    b. Starting on their left and continuing clockwise around the table, deal the cards.
6. All cards shall be dealt face-down.
    a. When a card shoe is used, the cards shall be dealt as follows:
        i. Five community cards in the center of the table; followed by
        ii. One card to each wagering area containing Ante and Blind wagers and/or Bonus wagers and then one card to the player-dealer; followed by
        iii. A further card to each such wagering area and the player-dealer, so each player and the player-dealer have two cards.
    b. When an automatic shuffler is used, the cards shall be dealt as follows:
        i. Five community cards in the center of the table; followed by
        ii. Two cards at a time to each wagering area containing Ante and Blind wagers and/or Bonus wagers; followed by
        iii. Two cards to the player-dealer.
7. After the cards have been dealt and delivered to each player and the player-dealer, the house dealer shall unload the remaining cards in the shuffler and place them into the discard rack without exposing the cards.
    a. When handling the cards, players shall at all times ensure that the cards remain on or above the area of the table.
    b. The cards must not be removed from the table.
8. After the dealing procedures above have been completed, each player shall examine their cards and decide whether to check (do nothing) or to make a Play wager three or four times the value of their Ante wager. Once a player bets, they cannot bet again and cannot change the bet.
9. When the players have made their wagers (if any), the house dealer shall proceed to turn over the first three community cards.
10. Players who have not already made a Play wager may decide to either check again or to make a Play wager two times the value of their Ante wager.
11. The house dealer shall proceed to turn over the remaining two community cards (the turn and the river).

12. When all five community cards are revealed, players who have not yet made a Play wager can either fold or make a Play wager equal to the value of their Ante wager.
13. A player who decides to fold shall place their cards face-down on the table. The house dealer shall then, in relation to each player who has folded:
    a. Collect the Ante wager, Blind wager, and any Trips Bonus Bet (if the hand is not a Three of a Kind or better) on behalf of the player-dealer.
        i. If the hand is a Three of a Kind or better, the Trips Bonus Bet will not be collected.
    b. Take the player's cards and individually spread out the cards, face-down, and count them.
    c. Place the cards in the discard rack.
        i. If the player placed a Trips Bonus Bet and the hand is a Three of a Kind or better the house dealer will leave cards, face up on the table, and will not collect or discard them until payout on the hand has been made.
        ii. If the player placed a Bad Beat Bonus Bet, the house dealer will leave cards, face up on the table, and will not collect or discard them until it is determined whether the player was involved in a qualifying bad beat hand.
14. For all remaining players, the house dealer will turn over the player-dealer's two cards.
15. Each player and the player-dealer's two cards will be combined with the five community cards to make the best five-card poker hand.
16. The action on payouts will always begin with the player to the left of the player-dealer position and continue clockwise.
17. All wagers shall be settled from seat to seat in the following order: Play, Ante, Blind wagers, Trips Bonus Bet, and then the Bad Beat Bonus Bet.
    a. Backline bettors will be paid immediately after the seated player they are behind and before the next seated player.
18. Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer shall be returned to the respective players.

How Winners are Determined and Paid

Once the hands have been completed, according to the guidelines above, the player's wagers are settled. The following shall apply when determining whether the player wins, loses or pushes.

The player-dealer does not qualify when the player-dealer does **not** have a Pair or higher, the house dealer reconciles the hands of those players who remain in the game in the following way:

NOTE: Ultimate Texas Hold'em handles qualifying differently than other games when the player-dealer does not qualify, it is not an automatic win for the player.

1. Starting with the player on the player-dealer's left, the house dealer shall:
    a. Expose each player's cards, signal a push for the Ante and return the Ante wager to each player that did not fold;
    b. Resolve the Play, Blind, Trips Bonus Bets and Bad Beat Bonus Bets normally (see below "When player-dealer qualifies"); and
    c. Collect, count and place the player's cards in the discard holder.

The player-dealer qualifies when the player-dealer's hand has a Pair or higher, the house dealer reconciles the hands of those players who remain in the game in the following way:

Ultimate Texas Hold'em

1. Starting with the player to the left of the player-dealer, the house dealer will:
   a. Bring the player's cards into the "work area" between the player-dealer's hand and the Bad Beat Bonus Bet area and reveal the player's cards;
   b. Determine the player's best five-card poker hand;
   c. Compare the player's hand with the player-dealer's, announce the value of the player's hand and whether it wins or loses.
2. A player's hand shall:
   a. Win if it has a higher value than the player-dealer's hand;
   b. Lose if it has a lower value than the player-dealer's hand;
   c. Constitute a push if it has a value equal to the player-dealer's hand.
   d. If a player wins with less than a Straight, the Blind bet pushes.
3. If a player's hand loses, the house dealer shall:
   a. Collect on behalf of the player-dealer, in order, the Play, Ante and Blind wagers;
   b. Determine whether the Trips Bonus Bet and Bad Beat Bonus Bet qualifies and pay accordingly on behalf of the player-dealer or collect the wager on behalf of the player-dealer;
   c. Collect, count and place the player's cards in the discard holder.
4. If a player's hand wins, the house dealer shall on behalf of the player-dealer:
   a. Pay the Ante and Play wagers on the hand;
   b. Pay the Blind wager if the hand is a Straight or better; see Blind pay table.
   c. Determine whether the Trips Bonus Bet and Bad Beat Bonus Bet qualifies and pay accordingly; see Trips Bonus pay table, and Bad Beat Bonus pay table.
   d. Collect, count and place the player's cards in the discard holder.
5. If a player's hand constitutes a push, the house dealer shall:
   a. Pay the Trips Bonus Bet if the hand is a Three of a Kind or better or collect for the player-dealer if the hand is not a Three of a Kind or better;
   b. Collect the Bad Beat Bonus Bet on behalf of the player-dealer.
   c. Collect, count and place the player's cards in the discard holder.
6. Winning Ante and Play wagers shall be paid 1 to 1.
7. Winning Blind wager, Trips Bonus Bet, and Bad Beat Bonus Bet shall be paid in accordance with the approved pay table. (see table below).
8. If the player receives a Three of a Kind or higher, the Trips Bonus Bet payouts are made regardless of whether the hand wins, loses, or pushes. (NOTE: If the player has a Three of a Kind or better, the Trips Bonus Bet always wins – even if the player folds.)
9. The player-dealer is never required to cover all opposing players' wagers. Payoffs of wagers are limited to the amount of the player-dealer wager. The house never participates as the player-dealer. The house never takes a percentage of wagers placed in the game. There is no maximum on the player-dealer's wager.

Blind Pay Table

Hand	Payout
Royal Flush	500 to 1
Straight Flush	50 to 1
Four of a Kind	10 to 1
Full House	3 to 1
Flush	3 to 2
Straight	1 to 1

Bonus Bet

Trips Bonus Bet

The Trips Bonus Bet is an optional bet for the game of Ultimate Texas Hold'em where players are betting that their hand will contain a Three of a Kind or better. The rules are as follows:

- The player combines their hole cards with the five community cards to form a five-card hand of Three of a Kind or better.
- The Trips Bonus Bet must be placed prior to the initial deal.
- Backline betting is permitted on the Trips Bonus Bet.
- See the collection rate schedule for restrictions on the amount that may be wagered and any collection fees taken on the Trips Bonus Bet.
- The Trips Bonus Bet may win or lose regardless of the outcome of the base game wager.
- If the player's hand qualifies for a payout, the player is paid by the player-dealer according to the table shown below.
- If the player's hand does not qualify for a Trips Bonus Bet payout, the player-dealer collects the Trips Bonus Bet.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.

Trips Bonus Pay Table

Hand	Payout
Royal Flush	50 to 1
Straight Flush	40 to 1
Four of a Kind	30 to 1
Full House	8 to 1
Flush	6 to 1
Straight	5 to 1
Three of a Kind	3 to 1

Bad Beat Bonus

The Bad Beat Bonus is an optional bet for the game of Ultimate Texas Hold'em. Players win if the player and the player-dealer are involved in a bad beat. There are two ways to win:

1. The player has Three of a Kind or better and loses to the player-dealer.
2. The player beats the player-dealer's hand of Three of a Kind or better, using the player's two cards and the five community cards.

- If the player's hand qualifies for payouts, the player-dealer pays the player according to the posted pay table. If the player's hand does not qualify, the player-dealer takes their wager and moves on to the next player.
- If the player-dealer and the player have a five-card tie; then the Bad Beat Bonus wager loses as neither the player-dealer nor the player suffered a bad beat.
- The Bad Beat Bonus Bet must be placed prior to the initial deal.
- Backline betting is permitted on the Bad Beat Bonus Bet.

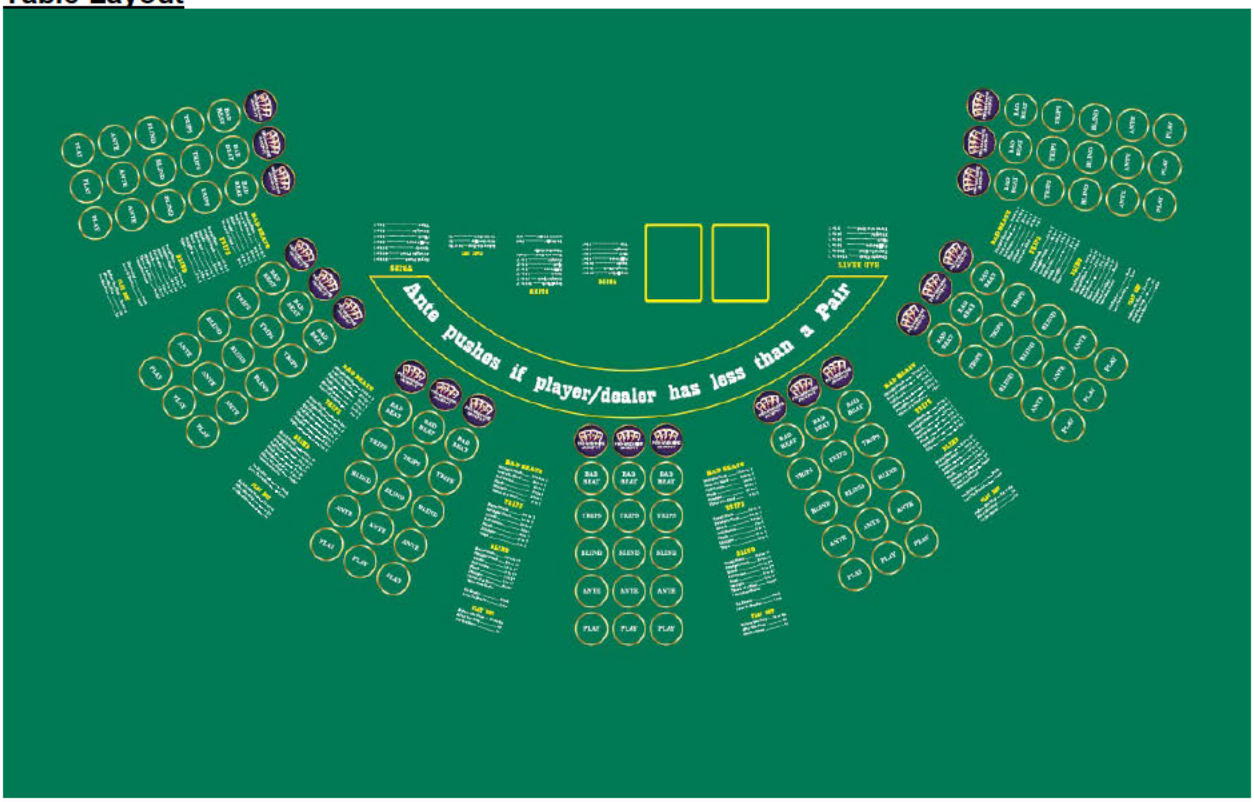
- See the collection rate schedule for restrictions on the amount that may be wagered and any collection fees taken on the Bad Beat Bonus Bet.

- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the players.

Bad Beat Bonus Pay Table

Hand Beaten	Payout
Straight Flush	7500 to 1
Four of a Kind	500 to 1
Full House	50 to 1
Flush	30 to 1
Straight	20 to 1
Three of a Kind	9 to 1

Table Layout



Collection Rates Schedule

For **schedule option 1 through 22**, the Player-Dealer Fee shall be taken per hand from the player-dealer position based on the total monetary value of all base game wagers and bonus bets placed before the initial deal, referred to as "Total Table Action." There shall be no collection fee taken from any player for placing a base game wager or bonus bet. A Bonus Bet may be less than, equal to, or greater than the base game wager but must be within table limits. The collection fees shall be taken and dropped by the house dealer prior to cards being dealt or any round of play being conducted.

Minimum wagering limits shall be between $5 and $300
Maximum wagering limits shall be $5,000

Schedule Option	Total Table Action	Player-Dealer Fee	Player Fee
1	$5 - $50	$1	$0
	$51 - $100	$2	
	$101 - $200	$3	
	$201 - $300	$6	
	$301+	$9	
2	$5 - $50	$2	$0
	$51 - $100	$3	
	$101 - $200	$5	
	$201 - $300	$8	
	$301+	$12	
3	$5 - $100	$1	$0
	$101 - $300	$2	
	$301 - $600	$4	
	$601 - $1,000	$7	
	$1,001+	$12	
4	$5 - $200	$1	$0
	$201 - $400	$2	
	$401 - $700	$4	
	$701 - $1,000	$8	
	$1,001+	$12	
5	$5 - $200	$1	$0
	$201 - $500	$2	
	$501 - $800	$6	
	$801 - $1,500	$10	
	$1,501+	$20	
6	$5 - $300	$1	$0
	$301 - $600	$3	
	$601 - $1,000	$7	
	$1,001 - $1,500	$13	
	$1,501+	$20	
7	$25 - $200	$3	$0
	$201 - $400	$6	
	$401 - $600	$12	
	$601 - $800	$15	
	$801+	$20	

Ultimate Texas Hold'em

8	$25 - $200	$1	$0
	$201 - $400	$2	
	$401 - $700	$5	
	$701 - $1,500	$9	
	$1,501+	$20	
9	$25 - $200	$1	$0
	$201 - $500	$2	
	$501 - $800	$6	
	$801 - $1,500	$10	
	$1,501+	$20	
10	$25 - $300	$1	$0
	$301 - $600	$3	
	$601 - $1,000	$7	
	$1,001 - $1,500	$12	
	$1,501+	$20	
11	$25 - $400	$1	$0
	$401 - $800	$5	
	$801 - $1,200	$10	
	$1,201 - $1,800	$15	
	$1,801+	$25	
12	$100 - $200	$1	$0
	$201 - $500	$3	
	$501 - $1,200	$7	
	$1,201 - $1,500	$15	
	$1,501+	$20	
13	$100 - $200	$5	$0
	$201 - $500	$10	
	$501 - $1,200	$15	
	$1,201 - $1,500	$25	
	$1,501+	$40	
14	$100 - $300	$1	$0
	$301 - $800	$5	
	$801 - $1,500	$10	
	$1,501 - $2,300	$15	
	$2,301+	$25	
15	$100 - $400	$6	$0
	$401 - $800	$15	
	$801 - $1,200	$20	
	$1,201 - $1,600	$25	
	$1,601+	$30	
16	$100 - $400	$2	$0
	$401 - $1,000	$6	
	$1,001 - $2,000	$12	
	$2,001 - $3,000	$25	
	$3,001+	$40	

17	$100 - $500	$2	$0
	$501 - $1,600	$7	
	$1,601 - $2,500	$20	
	$2,501 - $4,000	$35	
	$4,001+	$50	
18	$300 - $1,000	$4	$0
	$1,001 - $2,000	$25	
	$2,001 - $8,000	$40	
	$8,001 - $20,000	$65	
	$20,001+	$90	
19	$300 - $1,000	$5	$0
	$1,001 - $2,000	$30	
	$2,001 - $8,000	$50	
	$8,001 - $20,000	$70	
	$20,001+	$100	
20	$300 - $1,000	$3	$0
	$1,001 - $4,000	$15	
	$4,001 - $8,000	$25	
	$8,001 - $20,000	$50	
	$20,001+	$80	
21	$300 - $1,200	$3	$0
	$1,201 - $4,000	$12	
	$4,001 - $8,000	$20	
	$8,001 - $20,000	$35	
	$20,001+	$60	
22	$300 - $1,200	$4	$0
	$1,201 - $4,000	$15	
	$4,001 - $8,000	$25	
	$8,001 - $20,000	$50	
	$20,001+	$80	

Collection Procedures California Games

- California games utilize a player-dealer position. The position will be offered systematically and continuously in a clockwise manner around the table after every two hands.
- All controlled game wagers, including bonus bets, are collected or paid, to the extent that the player-dealer's wager covers.
- Once the player-dealer's wager has been exhausted, the wagers not covered by the player-dealer will be returned to the respective players.
- The gambling establishment does not participate in the actual play of the game and has no interest in the outcome of play.
- Only one collection schedule option, which utilizes one table limit and the specified collection fees for that table limit, as listed above, will be used at a gaming table at any one time.
- Collection rates and fees will be determined prior to the start of play of any hand or round. Rates will not be calculated as a fraction or percentage of wagers made or winnings earned.
- Flat fees on wagers may be assessed at different collection rates; however, no more than five collection rates may be established per table.

- Parkwest Casino Manteca will provide ample notice to patrons regarding the collection rates and fees, as well as the procedure for collecting them.
- Collection fees will be conspicuously posted on or within view of every gaming table.

Exhibit C

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

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(916) 263-5778

December 20, 2007

[redacted]

[redacted]

RE: Penal Code Section 330 and 330.11 in Player-Dealer Style Games

Dear [redacted]

You have inquired, with respect to compliance with Penal Code sections 330 and 330.11 in player-dealer style games, what the inspection practice of the Bureau of Gambling Control is in circumstances where, in the course of a given player-dealer style game, all players but one decline to occupy the player-dealer position. As you are aware, Penal Code section 330 prohibits banking games, and Penal Code section 330.11 provides, in relevant part:

> Banking game or banked game does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the 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 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.

It is the view of the Bureau of Gambling Control that by enacting section 330.11, the Legislature intended to insure that in player-dealer style games, all seated players must be afforded the temporary opportunity to wager against multiple players at the table. To fulfill this legislative intent the Bureau of Gambling Control has mandated that all game rules include a provision that the player-dealer position must continuously and systematically be offered to all seated players. Generally, acceptable rules require that each seated player have the opportunity to

act as player-dealer for two consecutive hands before the opportunity is rotated to the next player.

The Bureau of Gambling Control inspects licensed card room casinos to observe whether the opportunity to act as the player-dealer is continuously and systematically offered to all seated players must be required by the rules of all approved player-dealer style games. If, after a player acts as the player-dealer for two consecutive hands, the casino offers this opportunity to all other seated players in a manner that is verifiable by observers and surveillance cameras the requirement that the opportunity to act as the player-dealer be continuously and systematically offered to all seated players has been satisfied.

It is the view of the Bureau of Gambling Control that as long as the opportunity to act as the player-dealer is continuously and systematically offered to all seated players, in accordance with the approved rules of the game, the fact that, at times, all players but one may decline the player-dealer position, does not render the game an illegal banking game as long as the game procedures, described above, are properly followed.

I hope that this letter addresses your question.

Sincerely,

[redacted]

ROBERT E. LYTLE
Bureau Chief

For EDMUND G. BROWN JR
Attorney General

cc: Robert Mukai, Sr. Assistant Attorney General, Department of Justice
Mathew J. Campoy, Assistant Bureau Chief, Bureau of Gambling Control

Exhibit D

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF GAMBLING CONTROL
P. O. Box 168024
Sacramento, CA 95816-8024

February 19, 2016

TO: ALL CALIFORNIA GAMBLING ESTABLISHMENTS

RE: **NOTIFICATION REGARDING RULES OF GAMES FEATURING PLAYER-DEALER POSITION**

Penal Code section 330.11, applicable to controlled games with a player-dealer feature, commonly referred to as "California Games," affords all seated players an opportunity to wager against multiple players at the table, as long as the rules of the game preclude the maintenance or operation of a bank in the course of the game. Penal Code section 330.11 provides:

> "Banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the 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 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-dealer position.

"Banking games" are specifically prohibited by Penal Code section 330. Penal Code section 330.11 by its terms applies only to controlled games, i.e., games that by definition are not prohibited by statute or local ordinance. Under Penal Code section 330.11, a controlled game that features a player-dealer position is not a "banking game" if the game's published rules, in addition to meeting other specified conditions, provide for continuous and systematic rotation of the player-dealer position, and preclude the maintenance or operation of a bank by the house, another entity, a player, or an observer, during the course of the game.

In the past, the Bureau has accepted submission of rules for controlled games featuring a player-dealer position that provided that the player-dealer position would be offered to each player, but did not necessarily provide for acceptance of the player-dealer position. **Effective immediately, the Bureau will not approve any new game rules if they permit only offering the player-dealer position.**

The Bureau's inspection practice with respect to compliance with Penal Code section 330.11 was previously set forth in a letter dated December 20, 2007. Effective immediately, the Bureau's letter of December 20, 2007, is suspended pending review of the Bureau's inspection and game approval process. **By June 30, 2016, the Bureau will issue a notification of the revised enforcement and game approval practice relating to the rotation of the player-dealer position in a controlled game.** This notification will include options that the Bureau has deemed to be in compliance with Penal Code section 330.11. At that time, gambling establishments offering games with a player-dealer position will be advised to review their approved game rules for compliance. Gambling establishments will be given a specified period of time to modify existing game rules as needed to comply with any proposed changes issued by the Bureau. Approvals for games not in compliance with the Bureau's revised enforcement and game approval practice will be withdrawn at a date that will be established in the Bureau's future notification. Until that time, gambling establishments may continue to play previously approved games in accordance with the currently approved rules. Please note: Business and Professions Code section 19943.5 provides:

> If a gambling enterprise conducts play of a controlled game that has been approved by the department pursuant to Section 19826, and the controlled game is subsequently found to be unlawful, so long as the game was played in the manner approved, the approval by the department shall be an absolute defense to any criminal, administrative, or civil action that may be brought, provided that the game is played during the time for which it was approved by the department and the gambling enterprise ceases play upon notice that the game has been found unlawful. In any enforcement action, the gambling enterprise shall have the burden of proving the department approved the controlled game and that the game was played in the manner approved.

Sincerely,

[redacted]

WAYNE J. QUINT, JR.
Bureau Chief

For KAMALA D. HARRIS
Attorney General

cc: Third-Party Providers of Proposition Player Services

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF GAMBLING CONTROL
P.O. Box 168024
Sacramento, CA 95816
Phone: (916) 227-3584

June 30, 2016

TO: ALL CALIFORNIA GAMBLING ESTABLISHMENTS

RE: **NOTIFICATION REGARDING RULES OF GAMES FEATURING A PLAYER-DEALER POSITION**

Dear Gambling Establishment Representative:

A letter published February 19, 2016, notified all gambling establishments that a review of the Bureau of Gambling Control's (Bureau) inspection and game review process was being conducted with respect to the play of games featuring a rotating player-dealer position as permitted by Penal Code section 330.11. The February 19, 2016, letter informed all gambling establishments that a prior letter issued December 20, 2007, which had addressed the Bureau's inspection practice with respect to compliance with Penal Code section 330.11, was suspended pending this review, and stated that on or before June 30, 2016, a notification of the revised practice would be issued relating to the rotation of the player-dealer position in games permitted by Penal Code section 330.11.

The Bureau has now completed an extensive review of the play of games currently offered at gambling establishments throughout the State. A number of gambling industry stakeholders have provided input and all suggestions and comments received have been considered.

Penal Code section 330.11 provides in relevant part that acceptance of the deal by every player is not mandated if the Bureau finds that the rules of the game render the maintenance or operation of a bank impossible by other means. Accordingly, in considering rules for games featuring a player-dealer position that do not mandate acceptance of the deal by every player, the Bureau will deny approval to rules that do not do all of the following:

1. Provide for an offer of the player-dealer position to each player seated at the table immediately upon completion of every second consecutive hand, or more frequently if desired. The offer must be clearly visible to surveillance cameras and audible, so that each player at the table is aware of the opportunity made available by the offer.

2. Provide that no one person or entity may hold or otherwise be involved in the player-dealer position continuously for 60 minutes. The player-dealer position must rotate completely away from a person or entity within a 60-minute period, to a different

person or entity from the one who occupied the position during the hand immediately preceding the rotation. The 60-minute period commences upon acceptance of the player-dealer position.

3. Provide that upon failure of fulfillment of any of the requirements of play identified in paragraph 2, the game must end, and that a new game cannot begin for at least two minutes.

4. Provide for immediate notification to all players that the game has ended, cards or tiles cannot be dealt, and wagers cannot be made. The dealer tray must be covered during this time to indicate the game has ended.

5. Provide for the shuffling of all cards or tiles upon the opening of a new game.

Enclosed is a list of games featuring a player-dealer position currently approved for play in your gambling establishment. Gambling establishments are encouraged to review current game rules for all listed games for compliance with this notification. If the rules of any listed game are not in compliance with paragraphs 1 through 5 of this notification, proposed modified rules for each game must be received by the Bureau or postmarked **no later than September 30, 2016**. Games for which proposed modified game rules are received by the deadline may continue to be offered by the gambling establishment under the currently approved rules until the Bureau makes a determination on the proposed modified game rules. No application fee or deposit will be required for submission of proposed modified game rules for the games on the enclosed list. The Bureau will exercise its authority to issue temporary approvals (Cal. Code Regs., tit. 11, § 2071, subd. (c)) for 12 months to continue to monitor game play to ensure that rotation is occurring and banking is precluded, as specified in the above items 1 through 5.

If the rules of any listed game are not in full compliance with paragraphs 1 through 5 of this notification, and the Bureau does not receive proposed modified game rules by the deadline, the current approval for that game will be withdrawn and the game may no longer be offered.

Submit proposed modified game rules to the address or email address below:

Bureau of Gambling Control
Attn: Game Review Unit
P.O. Box 168024
Sacramento, CA 95816
[redacted]

The Bureau will not approve any other game modifications, new game approvals, or gaming activities until further notice.

Sincerely,

[redacted]

WAYNE J. QUINT, JR.
Bureau Chief

For KAMALA D. HARRIS
Attorney General

Enclosure

cc: Third-Party Providers of Proposition Player Services

Munger, Tolles & Olson LLP

May 29, 2025

VIA E-MAIL AND DOJ FILE EXCHANGE

Director Yolanda Morrow
Andreia McMillen, Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834
BGC_Regulations@doj.ca.gov

Re: *California Gaming Association Comments on Proposed Regulations Concerning Blackjack-Style Games*

Dear Director Morrow and Ms. McMillen:

Our firm represents the California Gaming Association ("CGA"), an industry trade group whose members comprise the majority of licensed gambling enterprises in California. The CGA's members provide tens of thousands of living-wage jobs to working Californians and hundreds of millions of dollars of tax revenue to host communities. Communities for California Cardrooms ("CCC") and the California Cardroom Alliance ("CCA") also join in these comments. The CCC is a nonprofit organization that provides a united voice for small businesses; advances and protects the local jobs and the economic opportunities that are provided by cardrooms; and educates the public on the benefits and history of cardrooms in their

communities. The CCA is a nonprofit organization that represents cardrooms from around the State in partnership with local communities.[1]

On behalf of the CGA, CCC, and CCA, we write to comment on the proposed regulations concerning the play and approval of blackjack-style games ("Blackjack Proposal" or "Proposal"), which the Bureau of Gambling Control ("Bureau") published on April 11, 2025. We strongly oppose the Proposal.

First, the Proposal is procedurally improper because only the Gambling Control Commission ("Commission")—not the Bureau—is empowered to restrict the play of any game on a statewide basis. The Bureau's effort to categorically prohibit blackjack-style games—including by revoking existing approvals for such games—usurps the role of the Commission and robs the affected cardrooms of essential due-process protections.

Second, the Proposal is substantively unauthorized because no statutory basis exists to restrict blackjack-style games. The Bureau premises the Proposal on California's nearly 150-year-old prohibition of the game "twenty-one." But the Proposal does not prohibit the nineteenth-century game of twenty-one, as it was played in 1885 (and thus known to the Legislature) when that game was added to Penal Code section 330. Rather, the Proposal defines and prohibits the modern and markedly different game of "blackjack." The Proposal, therefore, sharply conflicts with binding precedent, which provides that (1) a game enumerated in section 330 is defined by its established rules *at the time* it was prohibited, and (2) section 330's prohibition of that game does not extend to games with different rules, even if those games evolved from the enumerated game.

Third, the Proposal lacks the necessity, clarity, and consistency required for adoption under the California Administrative Procedure Act ("APA"). (Gov. Code, § 11349.1.) Among other things, the Bureau has failed to identify any recent change in law or fact that would necessitate reversing both (1) the Bureau's established policy on blackjack-style games, upon which the industry has relied for decades, and (2) the State's approach to construing and applying prohibitions on the games listed in section 330, which was established by the Attorney General more than a century ago. Moreover, specific aspects of the Proposal—such as the rule prohibiting game names from including any variation of the word "blackjack"—are

[1] A list of individual cardrooms and third-party providers of proposition-player services that join this letter follows after the signature page.

both unduly vague and facially unrelated to the Proposal's stated purpose of carrying out the Penal Code's prohibition on "twenty-one."

Fourth, the Proposal is based on a flawed economic assessment, which vastly understates the adverse effects that the Proposal will have on cardrooms, TPPPPS, California workers, and local communities.

We respectfully urge the Bureau not to move forward with the Proposal.

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Exhibit B: Dr. Michael Shackleford Report, "Mathematical Analysis of Vingt-Un"

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Exhibit D: *Webster's Internat. Dictionary* Definitions of "Blackjack" (1884–1930)

I. The Bureau Lacks Authority to Issue the Proposed Regulations

The Bureau is not authorized to adopt a regulation that categorically prohibits a certain type of game, or to revoke permits for games that the Bureau has already approved. The Bureau, "like all administrative agencies, has no inherent powers; it possesses only those powers that have been granted to it by the Constitution or by statute." (*Security Nat. Guaranty, Inc. v. Cal. Coastal Com.* (2008) 159 Cal.App.4th 402, 419.)[2] Accordingly, if the Bureau "takes action that is inconsistent with, or that simply is not authorized by [statute], then its action is void." (*Ibid.*)

The Gambling Control Act (Business and Professions Code section 19800 *et seq.*) ("GCA") entrusts the Commission and Bureau with separate and distinct duties. The Commission is responsible for establishing minimum regulatory standards for the gaming industry and adjudicating claims of unlawful gambling activity. (Bus. & Prof. Code, §§ 19824, 19840, 19841.) By contrast, the GCA assigns the Bureau an investigative and prosecutorial role. (See *id.* § 19826.) Specifically, the Bureau's statutory duties are limited to *vetting* applicants for gaming licenses (*id.*, subd. (a)), *monitoring* the conduct of active licensees (*id.*, subd. (b)), *investigating* suspected illegal gaming activity (*id.*, subds. (c)-(d)), *initiating* disciplinary actions before the Commission (*id.*, subd. (e)), and *approving* individual applications for the play of a specific controlled game (*id.*, subd. (g)). Unlike the Commission, which has general authority to "adopt regulations for the administration and enforcement of [the GCA]," (*id.* § 19840), the Bureau is authorized only "[t]o adopt regulations reasonably related to *its* functions and duties as specified in [the GCA]" (*id.* § 19826, subd. (f), italics added).

A. The Bureau Lacks Authority to Prohibit or Restrict Games on a Statewide Basis

The GCA does not authorize the Bureau to define "twenty-one" or any other game prohibited by the Penal Code, or to prohibit new categories of games. The

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[2] (See also *Louisiana Pub. Service Com. v. FCC* (1986) 476 U.S. 355, 374 ["[A]n agency literally has no power to act … unless and until [the Legislature] confers power upon it."]; *BMW of North America, Inc. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 995 ["It is fundamental that an administrative agency has only such power as has been conferred upon it by the constitution or by statute and an act in excess of the power conferred upon the agency is void."]; *B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 955–956 ["[A]n attempt by an administrative agency to enlarge the scope of the powers conferred upon it is unlawful and void."].)

Bureau is charged with reviewing and approving individual game applications. Only the *Commission* is empowered to promulgate regulations restricting the scope of lawful gaming activity in the state. (See Bus. & Prof. Code, § 19841, subds. (o)–(p).) And even "[t]he commission shall not prohibit, on a statewide basis, the play of any game or restrict the manner in which any game is played, unless the commission, in [a full adjudicatory proceeding], finds that the game, or the manner in which the game is played, violates a law of the United States, a law of this state, or a local ordinance." (*Id.* § 19842, subd. (a).) This provision ensures that "statewide" restrictions on gaming activity—the type of restrictions included in this Proposal—are evaluated by a five-member panel that has been duly appointed by the Governor for this purpose, after receiving legal arguments, evidence, and testimony from affected parties and the public. (See *id.* § 19811.) Further confirming the Bureau's limited role, the GCA provides that the Bureau may "recommend[]" limitations on games and gaming operations to the Commission. (See *id.* § 19841, subd. (p).) If the Legislature had intended to allow the Bureau unilaterally limit gaming on a statewide basis, it would have had no reason to specifically authorize the Bureau to recommend such changes to another regulatory body. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com*. (1987) 43 Cal.3d 1379, 1391 (*Dyna-Med, Inc.*) ["[T]he expression of certain things in a statute necessarily involves exclusion of other things not expressed."] [quoting *Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403].)

Critically, *neither* the Bureau nor the Commission is entitled to define the Penal Code's bar on "twenty-one," because "only the Legislature can define crimes and penalties." (*People v. Figueroa* (1999) 68 Cal.App.4th 1409, 1414.) The Legislature cannot delegate the responsibility to "determine what conduct is unlawful" to an administrative agency because the California Constitution requires the Legislature itself to make such "fundamental policy decisions." *(Ibid.* [citing Cal. Const., art. IV, § 1.) In the absence of a statutory definition of "twenty-one," it is up to the courts, not the Bureau, to either determine the correct interpretation of that prohibition or declare it void for vagueness. (See *People v. Akins* (2005) 128 Cal.App.4th 1376, 1387 ["[T]he courts, not the state and federal agencies … have the relevant expertise when it comes to interpreting and applying the provisions of the Penal Code."].)

B. The Bureau Lacks Authority to Revoke Existing Game Approvals

Moreover, the Bureau cannot under any circumstances (i.e., on neither a statewide nor an individual basis) unilaterally revoke an *existing* game approval without an adjudicatory determination that the game is unlawful. The GCA

permits the Bureau to place restrictions on how a controlled game is played only *during* the game-approval process and in accordance with the general standards set by the Commission. (See Bus. & Prof. Code, § 19826, subd. (g) [authorizing the Bureau to "[a]pprove the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played"].) The GCA does not allow the Bureau to place restrictions on a game *after* approval, or to revoke any existing game approvals.[3] Instead, it establishes a framework in which the Commission adjudicates whether a game approval should be withdrawn. (See Bus. & Prof. Code, § 19842 [supplying a legal standard for the Commission's decision to prohibit a game].) Within that framework, if the Bureau believes an "approval should be suspended or revoked," it must (1) "file an accusation with the commission," (*id.* § 19930, subd. (b)), and then (2) prove to the Commission that the game violates federal, state, or local law (*id.* § 19842, subd. (a)). The GCA also provides a specific process for aggrieved persons to obtain judicial review of a Commission decision. (*Id.* § 19811.) By contrast, the GCA provides *no* appeals process to review a decision by the Bureau to revoke a previously granted approval because the GCA does not contemplate the Bureau taking such action in the first place.

C. The Proposal's Revocation Procedure Undermines Due Process

The Bureau's proposal to sidestep this statutory framework not only is wrong as a statutory matter, but also threatens cardrooms' due-process rights. Indeed, the procedure outlined in the GCA, under which the revocation of *any* prior approval proceeds to a hearing before a neutral adjudicator, is not an optional statutory path—it is "the constitutional floor." (See *California DUI Laws. Assn. v. Dept. of Motor Vehicles* (2022) 77 Cal.App.5th 517, 530 [quotation marks omitted].) Due process prohibits the government from depriving a person of a government-issued right or privilege without granting that person an opportunity to be heard in "a fair hearing before a neutral or unbiased decision-maker." (*Ibid.*) Thus, under the state and federal Constitutions, a business permit cannot be revoked except "upon notice

[3] The Commission's own regulations refute any claim that the Bureau enjoys unilateral authority to revoke game approvals. (See, e.g., Cal. Code Regs., tit. 4, § 12550, subd. (f) [providing that the Commission's disciplinary regulations are not intended to preclude the Bureau "from issuing warning notices, notices to cure, advisory letters regarding violations or possible violations of law, or from withdrawing such upon further investigation," without making any mention of the Bureau's supposed authority to revoke game approvals]; *id.* § 12552, subd. (c) ["Any settlement of an accusation shall be submitted by the Bureau for approval by the Commission"].)

to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation."[4] (See *Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294 (*Bauer*) [California Constitution] [quotation marks omitted]; *Barry v. Barchi* (1979) 443 U.S. 55, 66–67 [Fourteenth Amendment].)

Despite this clear law, the Proposal does not envision that a cardroom whose game approval would be revoked would be afforded a hearing before a neutral decisionmaker, or even given a decision specifying the reasons why the approval is being revoked. Rather, the Proposal provides that if a cardroom does not take certain steps to modify a blackjack-style game within 60 days of the Proposal's effective date, the Bureau's approval of that game shall be revoked *summarily* and *automatically*. (Proposal § 2075, subds. (a) & (e).) Although the cardroom can appeal the revocation by submitting an objection to the Bureau Chief (now Director), the regulation governing this procedure (which itself has no foundation in the GCA) gives the Director total discretion to deny the objection without a hearing. (See *id*. [citing Cal. Code Regs., tit. 11, § 2071, subd. (d)–(e).) And, in all events, the Director's review here would be an empty gesture: The decision to revoke the game approval would be "based on a regulation [the Bureau itself] promulgated," so granting the cardroom's objection would be impossible because it would require the Director "to act contrary to [the Bureau's] own rule." (See *Sabatasso v. Superior Court* (2008) 167 Cal.App.4th 791, 795.)

D. The Proposal's Revocation Procedure Violates the Administrative Procedure Act

The Proposal's revocation procedure violates the APA, as well as due process. "One of the basic tenets of the California APA" is that "the *prosecutory* and, to a lesser extent, investigatory, aspects of administrative matters must be adequately separated from the adjudicatory function." (*Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 91; see also Gov. Code, § 11425.10, subd. (a)(4).)

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[4] These due-process protections apply "whether the license is granted as a privilege or recognized as a vested right; … it is the policy of our law that a person should not be deprived even of a 'permit' to engage in a legitimate business without a fair and impartial hearing and without an opportunity to present competent evidence for consideration by the licensing authority in opposition to the proposed revocation of his permit." (*Irvine v. State Bd. of Equalization* (1940) 40 Cal.App.2d 280, 284–285 [analyzing an analogous licensing scheme under the Alcoholic Beverage Control Act]; see also *Stewart v. San Mateo County* (1966) 246 Cal.App.2d 273, 283 [emphasizing that a statute should be interpreted to require a hearing in license revocation proceedings unless it expressly provides otherwise].)

The GCA accounts for this principle by instructing the Bureau to instigate revocation proceedings and the Commission to adjudicate them. But the Proposal seeks to bypass this legislative directive by (1) revoking approvals for an entire category of games, *without* the Commission's involvement, and then (2) empowering the Bureau Director—the agent who promulgated the rule triggering revocation—to unilaterally dispose of objections. The APA and due process both forbid this result. (See *Nightlife Partners*, *supra*, 108 Cal.App.4th at p. 92 ["[A]n employee engaged in prosecuting functions for an agency in a case may not, in the same or a factually related case, *participate or advise* in either the decision, or the agency *review's* [sic] of that decision."].)

II. The Proposed Regulations Are Inconsistent with the Penal Code and Surrounding Precedent

Setting aside the Proposal's many jurisdictional flaws, the Proposal lacks authority for the independent, substantive reason that no statutory basis exists to adopt the proposed restrictions on blackjack-style games. The Proposal purports to implement Penal Code section 330's prohibition of the game "twenty-one." But the Proposal does not define or prohibit the historical game of twenty-one. It instead defines the game "blackjack" (using the rules for modern variants of that game), and prohibits nearly every type of blackjack-style game that is currently approved by the Bureau, without regard for whether those games' rules are significantly different from the established rules of twenty-one.

The Proposal rests on at least one of two false premises—either (1) that modern blackjack-style games are, as a legal matter, the *same* as "twenty-one" (as that game was played in 1885), or (2) that Penal Code section 330 prohibits any game that is *similar or related* to "twenty-one," regardless of whether the games have material differences. Neither premise is correct. With respect to the first, historical evidence shows that modern blackjack is substantially different from the 1885 game of "twenty-one" in a number of ways. With respect to the second, settled judicial precedent makes clear that section 330's prohibition of a specific game, such as "twenty-one," must be interpreted by reference to the game's established rules and manner of play at the time it was prohibited. (See *People v. Gosset* (1892) 93 Cal. 641 (*Gosset*).) A game with more than slight differences from a prohibited game is not unlawful unless it violates some other prohibition (such as being played as a banking or percentage game). (*Tibbetts v. Van De Kamp* (1990) 222 Cal.App.3d 389, 393, 395–396, review den. Oct. 18, 1990.)

A. California's Prohibition of "Twenty-One" Is a Limited Exception to This State's General Acceptance of Gaming

Gaming in various forms has long been prevalent in California. When California attained statehood in 1850, cardrooms were already pervasive. (Wear Simmons, Cal. Research Bureau, CRB 06-004, Gambling in the Golden State—1998 Forward (2006) p. 107.) Other states banned gambling around the 1850s. (See, *e.g.*, *State v. Provo* (1961) 44 Haw. 665, 672 ["[I]t was the intention of our legislature to broadly prohibit [all gambling games in the 1850 Hawaii Penal Code] so as to discourage gambling in all its forms."].) By contrast, the earliest statutes passed by the California Legislature included provisions governing the licensing and taxing of gambling establishments. (See Stats. 1851, ch. 9, § 1 ["An Act to license gaming"].) The Legislature itself has found:

> The State of California has permitted the operation of gambling establishments for more than 100 years. Gambling establishments were first regulated by the State of California pursuant to legislation which was enacted in 1984. Gambling establishments currently employ more than 20,000 people in the State of California, and contribute more than one hundred million dollars ($100,000,000) in taxes and fees to California's government. Gambling establishments are lawful enterprises in the State of California, and are entitled to full protection of the laws of this state.

Bus. & Prof. Code, § 19801, subd. (b). Our state's acceptance of gaming continues today not only in cardrooms, but in many other venues—including at horse racing tracks and through a state lottery system that has raised more than $46 billion for California schools since 1985. (See https://www.calottery.com/en/about-us.)

Only a few types of gambling games are outright prohibited in California. The principal statutory source of these restrictions is Penal Code section 330, which was enacted in 1872. In its current form, section 330 bans roughly a dozen specific games and "any banking or percentage game." (Pen. Code, § 330.) Because section 330 identifies certain gambling games and not others, the California Supreme Court has found it "obvious" that the statute "was intended to ban betting or wagering only in regard to a limited number of games." (*In re Hubbard* (1964) 62 Cal.2d 119, 126.) Thus, a game that is "not *specifically listed* under section 330 and not played as a banking or percentage game is not prohibited." (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 393, italics added; *Monterey Club v. Superior Court* (1941) 48 Cal.App.2d 131, 147 [same].)

The Legislature added "twenty-one" to Penal Code section 330's list of prohibited games in 1885. Because section 330 does not expressly define any of the games that it makes unlawful, including "twenty-one," courts have interpreted those prohibitions narrowly. (See *Tibbetts*, *supra*, 222 Cal.App.3d at p. 395 [applying the "fundamental rule" that a "penal statute should not be interpreted to cover an alleged offense which is not plainly within its terms"] [quotation marks omitted].) The bar on "twenty-one" applies only to the specific game or type of game that went by that name "at the time of the [1885] amendment." (*Id.* at p. 391 [interpreting section 330's equivalent prohibition of "stud horse poker"].) In other words, a person violates the bar on "twenty-one" only by playing the particular *version* of twenty-one proscribed by the Legislature, "in the usual way, and according to its established rules." (See *Gosset*, *supra*, 93 Cal. 641 at p. 643.) Variants of the game "which have evolved since 1885" and have more than slight differences are not prohibited. (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 396.)

The legislative record for the 1885 amendment to Penal Code section 330 does not detail why the Legislature found "twenty-one" more objectionable than other gambling games. (See *Tibbets*, *supra*, 222 Cal.App.3d at p. 393.) But tellingly, the Legislature has not added any games to section 330's list of specifically prohibited games since 1891, even though most of the listed games (including twenty-one) have become obsolete, and many new games have developed. According to the courts, the Legislature recognized the impracticality of "undertaking numerous piecemeal amendments every time a new game is deemed worthy of prohibition," so it "adopted the 'banking or percentage game' test as a flexible means of reaching" the actual problem sought to be addressed by section 330. (*Sullivan v. Fox* (1987) 189 Cal.App.3d 673, 679.) That problem was not the objective or mechanics of any particular game, but rather "the house having an *interest* in the game, whether through acting as banker or taking a percentage of the wagers." (*Walker v. Meehan* (1987) 194 Cal.App.3d 1290, 1296, italics added; see *Tibbetts*, *supra*, 222 Cal.App.3d at p. 396 [declining to interpret section 330 to prohibit a game that had certain mechanical similarities to an enumerated game because "the house percentage aspect of the game, not the face exposure of cards, was the element considered … objectionable"].)

B. Twenty-One and Blackjack Are Different Games

Unlike twenty-one, blackjack has never been listed in section 330. In fact, it was not until decades after twenty-one's prohibition that the term "blackjack" even

came to refer to a card game with a 21-point count.[5] (See Dr. David G. Schwartz Report, "Twenty-One: The Evolution of a Game" (Schwartz Report), Ex. A at p. 7 & Attach. B, at p. 62 [1907 edition of *Hoyle's Rules*, identifying "Black-Jack" as a version of the game hearts, with totally different rules from either twenty-one or modern blackjack].) The earliest law addressing the game, a 1931 Nevada statute, listed blackjack as a separate game from twenty-one. (See Nev. Stats. 1931, 165, ch. 99, § 1.) Although blackjack likely evolved from twenty-one (and is sometimes casually, albeit confusingly, referred to as twenty-one), the game of "twenty-one" that California prohibited in 1885 had substantially different rules from modern blackjack-style games.

As discussed below, these rule differences have a significant effect on each game's basic strategies and manner of play, enough so that an experienced player of modern blackjack would be utterly confused by the rules for twenty-one. (See Schwartz Report, Ex. A at pp. 9, 12.) Moreover, most of twenty-one's distinct rules were far more favorable to the dealer as compared to modern blackjack, such that when twenty-one was played as a house-banked game, the house advantage was up to *forty times* larger than in modern variants of blackjack. (Dr. Michael Shackleford Report, "Mathematical Analysis of Vingt-Un" (Shackleford Report), Ex. B at pp. 5, 7.) Individually—and certainly in combination—these distinctions make the prohibited version of twenty-one "fundamentally different" from any modern blackjack-style game. (Schwartz Report, Ex. A at p. 12.)

(1) Twenty-One and Blackjack Have Different Game Rules

The rule differences between twenty-one and modern blackjack-style games are clear. In connection with this rulemaking, Dr. David Schwartz, a tenured professor at the University of Nevada, Las Vegas and historical gaming expert, surveyed rulesets for the game "twenty-one" across 19 editions of *Hoyle's Rules* published from 1825 to present day.[6] (See Schwartz Report, Ex. A.) Dr. Schwartz notes a "major dividing line" between rulesets published before and after the mid-

[5] In the 1884, 1911, and 1930 editions of Webster's International Dictionary of the English Language, "blackjack" does not refer to any card games but rather, to (1) the mineral, sphalerite, (2) a type of burnt sugar, (3) a weapon, or (4) a leather vessel for beer. (See Webster's Internat. Dictionary Definitions of "Blackjack" (1884–1930), Ex. D.)

[6] As Dr. Schwartz explains, *Hoyle's Rules* has been considered "the last word" on the rules of European and American card games for centuries and is thus an authoritative source for determining the established rules of a game at any given time. (See Schwartz Report, Ex. A at p. 3.)

Twentieth Century—the same period in which the term "Black Jack" first appears. (*Id.* at pp. 6–7.)

In pre-1930s versions of twenty-one ("Nineteenth Century Twenty-One"), the dealer exercised most of the discretionary playing decisions. (*Ibid.*) At the start of each round, each player (including the dealer) received one card before placing a wager. After looking at her first card, the dealer could force the other players to double their wagers. Each player then received a second card. Both dealer cards remained hidden from the players. After seeing how each player wagered and played, the dealer had discretion whether to stand, hit, or split. The dealer could hit on any point total, including 17 or 18. The dealer could split any pairs, including aces or 8s, which increased the dealer's chances of a 21 and decreased the likelihood of going over 21. If the dealer drew to 21 on the initial draw (or, in many rulesets, after hitting), then the dealer would receive double from every other player, including where the dealer had already forced the other players to double their wagers, thereby winning quadruple sums. Similarly, players who drew a "natural" twenty-one on the initial draw received double from the dealer. In many variations of Nineteenth Century Twenty-One, the dealer won all ties.

By around 1950, the rules of the game colloquially referred to as "twenty-one" had become largely identical to the contemporary version of blackjack that is played in most Nevada, New Jersey, and California tribal casinos ("Modern Blackjack"). (See Schwartz Report, Ex. A at p. 8.) In Modern Blackjack, the dealer has *no discretion* on how to play her hand. Players make all the strategic decisions, including how much to wager, and whether to hit, double down, split, surrender, or take insurance. The sequence of play has also changed: Players bet before receiving cards and act first. Players also see one of the dealer cards before making their decisions. The dealer, meanwhile, does not have the discretion to see her first card and then "force" a player to pay double. Dealers cannot split their cards. Further, dealers do not receive a bonus if they draw or hit to 21, but players that draw a natural 21 are paid 3:2 (or, in some recent variations, 6:5). All ties are pushes with neither the player nor the dealer winning.

The rule differences between Nineteenth Century Twenty-One and Modern Blackjack are detailed in the table below. The Proposal ignores these rules differences and incorrectly defines Modern Blackjack as the game prohibited by section 330.

Nineteenth Century Twenty-One	Modern Blackjack
Cards are dealt face-down to both the dealer and players.	Cards are typically dealt face-up to the players. The dealer receives one card face-down and one card face-up.
Bets are placed after the first card is dealt.	Bets are placed before the cards are dealt.
Players cannot place insurance bets.	If the dealer's face-up card is an ace, a player can wager up to half of her original bet that the dealer has a natural 21.
After looking at her first card, the dealer can force players to double their wagers.	The dealer cannot force players to increase their wagers.
If the dealer has a natural 21, she collects double from each player without a natural 21. If the dealer declared double after viewing her first card, she collects quadruple each player's original wager.	If the dealer has a natural 21, she collects from each player without a natural 21 whatever amount that player has wagered.
If a player has a natural 21, she collects double from the dealer (and, in early game variations, from other players without a natural 21).	If a player has a natural 21, she collects 3:2 or 6:5 from the dealer, depending on house's posted odds.
The dealer has discretion to hit or stand.	Whether the dealer hits or stands is determined by game rules.
The dealer has discretion to split.	The dealer cannot split.
Ties go to the dealer.[7]	Ties push.

By using the rules of Modern Blackjack to define "twenty-one," the Proposal muddies enforcement of section 330, rather than sharpening it. For example, the Proposal indicates that a game constitutes blackjack (and therefore, a prohibited

[7] Although some historical rulesets treat ties as a push (or note that this rule is subject to variation), the rule that ties count as a dealer-win appears in rulesets published in 1875, 1880, 1885, 1887, 1890, 1909, and 1929. (See Schwartz Report, Ex. A at pp. 3, 6–8 & Attach. B at pp. 20–58, 66–89.)

form of twenty-one) if, among other things, the game rules set forth when the dealer must hit or stand, and prohibit the dealer from splitting (see Proposal § 2073, subd.(a))—notwithstanding that the dealer had free will to hit, stand, or split in Nineteenth Century Twenty-One. The Proposal does not include these rules among the potential rule modifications that are insufficient to distinguish a game from "twenty-one." (See *id.* § 2073, subd. (b).) Thus, according to the Proposal, a game using an exact copy of a twenty-one ruleset from the 1880s *can* be approved for play, whereas most modern blackjack-style games cannot.

(2) Twenty-One and Blackjack Have Fundamentally Different Strategies and Manners of Play

The rule differences between Nineteenth Century Twenty-One and Modern Blackjack—particularly rules governing the dealer's choices—have a transformative effect on the strategies and structure of the game.

The defining feature of any blackjack-style game is that the rules predetermine when the dealer will hit, stand, or split. (See Schwartz Report, Ex. A at pp. 9–12.) Unlike many card games, including poker and gin rummy, a player of Modern Blackjack knows exactly how her opponent (the dealer) is going to respond to whatever card is dealt next. This means that the order of cards in the deck is the *only* variable affecting the outcome of the game that is outside of the player's control. Consequently, Modern Blackjack is one of the few games where a player can consistently improve her odds of winning by employing a fixed and simple strategy. (*Ibid.*) The "basic strategy" for Modern Blackjack was invented in the 1950s, and versions of that strategy are applied by players of effectively every variant of the game. (*Ibid.*)

Basic blackjack strategy comprises a few, clear-cut principles that tell a player what decision to make next, depending on the value of the dealer's upturned card and the total point value of the player's hand. In most blackjack-style games, applying basic strategy can reduce the dealer's advantage to *0.5% or less*—the narrowest house edge of any game offered in the typical Las Vegas casino. (*Ibid.*) Employing more complex "card-counting" strategies—wherein a player tracks how many high-value cards are left in the deck and alters her betting practices accordingly—can wipe out the house edge entirely and give the *player* an advantage of up to 3%. (*Ibid.*) Again, these strategies are effective only because Modern Blackjack has features that are absent from Nineteenth Century Twenty-One: (1) The dealer's first card is visible to the players; (2) the dealer must hit or stand on that card the same way every single time; and (3) the dealer cannot force players to increase their wagers based on the strength of the dealer's own hand. (*Id.* at pp. 7, 9.)

According to many historians, the discovery of blackjack strategy was largely responsible for Modern Blackjack's skyrocketing popularity in Nevada and New Jersey casinos in the mid-Twentieth Century. (*Id.* at pp. 9–10.) The appeal was obvious: By mastering a few simple rules, players could play Modern Blackjack "perfectly," with less experience than high-skill games like poker require, and with far better odds than high-chance games like roulette. Basic blackjack strategy is now so streamlined and standardized that it is commonly condensed to a single index card that novice players can bring with them to the table.

	DEALER UPCARD									
Hard total	2	3	4	5	6	7	8	9	10	A
5-7	H	H	H	H	H	H	H	H	H	H
8	H	H	H	H	H	H	H	H	H	H
9	H	D	D	D	D	H	H	H	H	H
10	D	D	D	D	D	D	D	D	H	H
11	D	D	D	D	D	D	D	D	D	D
12	H	H	S	S	S	H	H	H	H	H
13	S	S	S	S	S	H	H	H	H	H
14	S	S	S	S	S	H	H	H	H	H
15	S	S	S	S	S	H	H	H	R	R
16	S	S	S	S	S	H	H	R	R	R
17	S	S	S	S	S	S	S	S	S	RS
Soft total	2	3	4	5	6	7	8	9	10	A
A, 2	H	H	H	D	D	H	H	H	H	H
A, 3	H	H	H	D	D	H	H	H	H	H
A, 4	H	H	D	D	D	H	H	H	H	H
A, 5	H	H	D	D	D	H	H	H	H	H
A, 6	H	D	D	D	D	H	H	H	H	H
A, 7	DS	DS	DS	DS	DS	S	S	H	H	H
A, 8	S	S	S	S	DS	S	S	S	S	S
A, 9	S	S	S	S	S	S	S	S	S	S

(Schwartz Report, Ex. A at p. 10.)

Applying Modern Blackjack's basic strategy to a game of Nineteenth Century Twenty-One would be not only ineffective, but impossible. To begin, the rules of Nineteenth Century Twenty-One did not permit a player to see the dealer's first card after the initial deal, so the player could not evaluate the dealer's likelihood of busting before playing the player's own hand. But even if that card were visible, basic blackjack strategy would still be useless because the rules permitted the dealer to *choose* whether to hit, stand, or split. There was no way for a player to know whether the dealer would play aggressively or conservatively because that choice would naturally depend on where the players' point totals stood when the dealer took her turn at the end of the hand.

More complex card-counting strategies would be equally ineffective in Nineteenth Century Twenty-One. As with any blackjack strategy, card-counting relies "on the fixed and predictable rules that govern the dealer." (Schwartz Report, Ex. A at p. 11.) If the dealer could choose whether to hit, "the basic premise of card

counting—that more aces and tens in the deck asymmetrically benefits players because dealers are more likely to bust and naturals are more likely—would be obliterated." (*Ibid.*) Card-counting also requires players to increase or decrease their bets depending on which cards remain in the deck(s). This practice would be counterproductive in Nineteenth Century Twenty-One, because the dealer could (1) force players to double their wagers *after* she drew a favorable card and (2) split pairs like 8s that are otherwise likely to lead to a dealer bust. In short, the two games have fundamentally different strategies.

(3) Twenty-One and Blackjack Have Dramatically Different Odds and Probabilities

Due to its different rules, Nineteenth Century Twenty-One had markedly different odds and probabilities than Modern Blackjack. That is because Nineteenth Century Twenty-One gave the dealer a number of advantages over the players that Modern Blackjack does not. (See Part II.B(1), *supra*.) Together, these rules dramatically enhanced the dealer's chances of beating the players. Indeed, Michael Shackleford, a mathematician who specializes in the analysis of casino games, analyzed the odds of Nineteenth Century Twenty-One by running a computerized simulation of 155 billion hands of the game, under the rules provided in contemporaneous editions of *Hoyle's Rules*. (See Shackleford Report, Ex. B at pp. 3, 5.) According to Shackleford, the dealer in Nineteenth Century Twenty-One had a statistical advantage of **41.62%**.[8] (*Id.* at p. 7.) By comparison, the dealer's advantage in modern blackjack-style games typically ranges from 0.27% to 1.98%. (*Ibid.*)

(4) The Differences Between Twenty-One and Blackjack Render Them Separate and Distinct Games

Considering its substantially different rules, strategies, and odds, Modern Blackjack is a "fundamentally different" game from Nineteenth Century Twenty-One. (Schwartz Report, Ex. A at p. 12.)

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[8] The dealer's advantage in Nineteenth Century Twenty-One is enormous in even the least dealer-friendly variations of the game. For example, although the dealer's ability to force double wagers is listed as a standard rule in nearly all rulesets surrounding 1885, one ruleset identifies it as a game variation. (Schwartz Report, Ex. A at p. 6 & Attach. A.) Even with this rule removed, the dealer's advantage is 21.75%. (See Shackleford Report, Ex. B at p. 7, fn. 1.) Similarly, even if ties are designated a no-win or "push," the dealer's advantage is still 21.66%. (*Ibid.*)

Dr. Schwartz offers a logical analytical framework for assessing why Nineteenth Century Twenty-One and Modern Blackjack are distinct games, rather than mere variations of each other: A new game is a mere variant of an existing game if (1) "a player can adapt to [the] game with minimal instruction," and (2) "the new game involves no fundamental shifts in player strategy." (Schwartz Report, Ex. A at p. 4.) Conversely, if "a player using the old ruleset would be bewildered, or game strategies change significantly for any participant," then the games are distinct. (*Ibid.*) Applying this framework, it is obvious that Nineteenth Century Twenty-One and Modern Blackjack are different games.

Transitioning a player from Nineteenth Century Twenty-One to Modern Blackjack, or vice versa, would require both significant instruction and a fundamental shift in strategy. To start, Modern Blackjack has rules that alter, among other things, (1) when and how bets are placed; (2) when cards are revealed; (3) what drawing or hitting to 21 is worth to the player and dealer, respectively; (4) whether the dealer has discretion over decisions about gameplay; and (5) whether the dealer can force players to increase their initial wagers. (See Part II.B(1), *supra*.) Even an expert player of Modern Blackjack would need these rules explained (probably several times) before participating in a game of Nineteenth Century Twenty-One. Otherwise, the player would be thoroughly confused when, for example, the dealer suddenly demanded that the player double her wager after the first cards were dealt (and even more bewildered when the dealer later revealed a natural 21 and instructed the player to pay twice the doubled amount). A modern player would also be incensed that both of the dealer's cards were hidden, and that the dealer sometimes hit on 17 or 18 and split pairs. The rules of Nineteenth Century Twenty-One would be somewhat more familiar to a player of pontoon, another relation of twenty-one that emerged in the late Nineteenth Century and remains popular in Britain. (See Schwartz Report, Ex. A at p. 7.) In pontoon, unlike Modern Blackjack, "the dealer's cards remain hidden, the dealer plays with discretion, and a natural twenty-one pays double." (*Ibid.*)

More importantly, Modern Blackjack's removal of dealer discretion "shift[s] the entire nature of the game" by allowing "for the development of a strategy predicated on fixed and predictable rules." (*Id.* at p. 11.) As discussed above, that same fixed strategy would be useless in Nineteenth Century Twenty-One because "it would be impossible to account for a dealer's caprice in choosing whether to play aggressively or passively." (*Id.* at p. 10; Part II.B(2), *supra*.) Indeed, it is *impossible* to create a fixed, optimal strategy for players in Nineteenth Century Twenty-One. Game outcomes depend on the dealer's choices, so players must react to the dealer's general playing style to the best of their abilities (similar to how players "read" their opponents in poker games).

The absence of dealer discretion puts Modern Blackjack in an entirely different genre of games from Nineteenth Century Twenty-One. Modern Blackjack is similar to many common casino games, such as baccarat, in that it pits players against an opponent who makes predictable choices based on fixed rules of play. By contrast, Nineteenth Century Twenty-One pits players against an *active* opponent, who makes discretionary choices like them. For this reason, "[i]t is inconceivable that any modern Las Vegas casino would offer" Nineteenth Century Twenty-One as a banked game, notwithstanding the potentially exorbitant house advantage. (See Schwartz Report, Ex. A at p. 12.) In modern casino-banked games, the casino dealer *always* follows fixed rules of play. This ensures that the house advantage remains *consistent* over time and across multiple dealers. (*Ibid.*) "It also prevents players from feeling that they are losing because of the dealer's skill rather than pure chance." (*Ibid.*)

Certainly, Nineteenth Century Twenty-One and Modern Blackjack have some features in common due to their shared ancestry. But that is true of *many* games that no one would consider to be mere variations of one another. Poker is one salient example:

> Poker has evolved to include several subsets of games, including straight poker, where all cards are dealt face-down with no draw of cards; draw poker, where cards can be discarded and new cards drawn to form a hand; stud poker, where some cards are dealt face-down and some face-up; and community poker, where players combine shared cards with individual cards to make a complete hand. These games have different strategies and manner of play but are all referred to as "poker" games.
>
> There are also games that include the word "poker" in their names, like Three Card Poker and Pai Gow Poker, which use poker hand rankings but have an entirely different betting format and strategy.

(Schwartz Report, Ex. A at pp. 4–5.)

Nearly every category of poker uses the same types of hands (e.g., pairs, straights, flushes), assigns cards and hands the same rankings (e.g., aces are high cards, flushes beat straights), and shares the same basic objective (i.e., build a higher-value hand than other players). Nevertheless, the fact that a royal flush is the best possible hand in both stud poker and draw poker does not mean that these games are mere variants of the same game. Because each category of poker has unique rules that affect the way that cards are dealt and bets are placed (which, in turn, alters the strategy of the game), each category of poker is distinct. The same

is true of Nineteenth Century Twenty-One and Modern Blackjack. Although both games use the same card values (e.g., aces are worth one or eleven) and share the same basic objective (i.e., hitting closer to twenty-one than the dealer, without busting), the games are distinct from each other because they have numerous rule differences that affect the format and strategy of the game.

California courts (and the Bureau itself) have long recognized that, because each category of poker has its own "distinct format and strategy," these games are legally separate and distinct from each other, notwithstanding their similar names and features. (*Tibbets*, *supra*, 222 Cal.App.3d at p. 395; see also Ops.Cal.Atty.Gen. 914, 3-914 (Nov. 28, 1903) [narrowly interpreting section 330's bar on a type of poker to apply only to that specific game and variants that are "practically the same"].) Thus, although section 330 expressly prohibits "hokey-pokey" and "stud horse poker" (four- and five-card versions of stud poker), courts have questioned whether those prohibitions are broad enough to prohibit stud horse poker generally (see *Tibbets*, *supra*, at pp. 395–396), and found it obvious that they do not extend to *other* categories of poker, such as community poker or draw poker. (See *ibid.* [community poker]; *Monterey Club*, *supra*, 48 Cal.App.2d at p. 148 [draw poker]; *see also In re Meyer* (1895) [5 Cal.Unrep. 64, 65 [40 P. 953, 954] finding that playing a form of poker that is not mentioned in section 330, even for money, is "as innocent as chess" because the difference between such a game and an enumerated game "is just exactly as broad as the difference between legality and illegality"].) Notably, stud poker and community poker are similar in that they feature the same card values, hand rankings, and basic game objectives that are common across most categories of poker, *and* one or more cards are exposed. Nevertheless, because the exposed cards are *shared* in community poker, courts have held that stud poker and community poker have sufficient differences in "format and strategy" to be distinct under California law. (*See Tibbetts*, *supra*, at pp. 395–396; see also Part II.C(2).)

The courts' approach to poker applies with at least equal force to Nineteenth Century Twenty-One, which is different from Modern Blackjack in ways that are at least as distinctive as those that distinguish various poker games. Indeed, *standing alone*, the fact that the dealer's cards were hidden in Nineteenth Century Twenty-One, whereas one dealer card is exposed in Modern Blackjack, would be sufficient to distinguish the games under *Tibbetts*. The range of other, more significant differences between the games—including with regard to the dealer's discretion, the betting sequence, and the availability of certain types of bets—confirm that Nineteenth Century Twenty-One and Modern Blackjack are distinct games under California law.

(5) Cardroom Blackjack-Style Games Are Particularly Different from Twenty-One

Cardroom blackjack-style games have even more differences from Nineteenth Century Twenty-One than standard versions of Modern Blackjack. For example, many cardroom blackjack-style games have a "no bust" feature, meaning the player and player-dealer can tie at 22 or even 25 (a three-card hand). Other cardroom blackjack-style games are played with specially marked cards, which provide for unique point totals (like 21.5, 22 and 24), include bonuses, and/or change the payouts, odds, and game results. Some games use a 60-card deck, and others add jokers that count as a 12 on the initial deal, which changes the highest-ranked hand and the odds. Each of these changes makes a variant of cardroom blackjack-style games a unique game, a fact acknowledged by the Bureau in its existing approvals which specify the particular version of a game that is authorized for play at the cardroom.

The U.S. Patent Office has recognized the significance of these variations in gameplay. To qualify for a patent, a game must be sufficiently different from preexisting games, such that the differences are novel, non-obvious, useful, and of patentable subject matter. (35 U.S.C. § 102(a)-(b), 103(a); *Kimberly-Clark Corp. v. Johnson & Johnson* (Fed. Cir. 1984) 745 F.2d 1437, 1453–1454.) Applying this standard, the Patent Office regularly issues distinct patents for cardroom blackjack-style games that have different rules from related, preexisting games. (See, e.g., United States Patents Nos. 6,182,968; 6,170,828; 8,210,919.)

The Bureau itself recognizes that there are many different variations of blackjack-style games by identifying, in any given approval, which *specific* variation of the game is approved for play at the cardroom at issue. For example, a Bureau approval might specify "No Bust 21st Century Blackjack version 4.0" or "No Bust 21st Century Blackjack (Jokers Wild)", two different games from the same game developer.

Considering their different (and often incompatible) rules, the variations of Modern Blackjack addressed in the Proposal are plainly distinct from Nineteenth Century Twenty-One. These games are not prohibited—or even contemplated—by Penal Code section 330, and the Bureau has no basis for banning them.

C. The Blackjack Proposal Conflicts with Court Decisions

The caselaw further establishes that modern blackjack-style games are not "twenty-one." Courts enforcing Penal Code section 330 have made clear that a game listed in the statute must be defined by its established rules *at the time* it was

prohibited. Section 330's prohibition of "twenty-one" does not extend to games with materially different rules, structures, or strategies. The Proposal ignores these principles and improperly equates modern blackjack-style games with a distinct and markedly different game that was banned nearly a century and a half ago.

(1) *Gosset* Instructs that an Enumerated Game Is Defined by "Its Established Rules" and "Usual Way" of Play

By extending section 330's bar on "twenty-one" to cover blackjack-style games, the Proposal conflicts with *People v. Gosset*, which instructs courts to analyze alleged violations of section 330 by looking at whether an enumerated game is played "in the usual way, and according to its established rules." (*Supra*, 93 Cal. at p. 643.)

In *Gosset*, a defendant was refused a jury instruction that a prohibited game, "faro," was "a game played with a full deck of fifty-two cards." (*Ibid.*) Because there was no evidence that "playing [faro] with one or two cards less" than a full deck would alter the game in any respect (or that the defendant had actually used fewer than 52 cards), the court found no error. (*Ibid.*) The California Supreme Court explained:

> [W]hen a prohibited game is played in all other respects in the usual way, and according to its established rules, the purpose of the law cannot be thwarted by the simple devise of playing it with one or two cards less than the number usually employed.

(*Ibid.*) The Proposal flouts *Gosset*'s holding in two ways.

First, by equating "twenty-one" with Modern Blackjack, the Bureau disregards *Gosset*'s reference to a game's "established rules" and "usual way" of play. To apply section 330, any analysis must start by identifying twenty-one's "established rules." "Establish[ed]" means "[t]o make stable or firm; to fix immovably or firmly…" (Webster's Internat. Dict. of the English Language (Bell & Sons 1907) p. 511.) The "established rules" of twenty-one in 1885 cannot be divined by looking at how *blackjack* was played in 1960 or is now played in 2025—otherwise, the definition and scope of the prohibited games in section 330 would never be fixed. Rather, under *Gosset*, games prohibited by section 330 must be defined by their "established rules" and "usual" method of play *at the time* they were added to that statute. (*Gosset*, *supra*, 93 Cal. at p. 643.) The Proposal makes no attempt to state the rules of twenty-one as that game was played in 1885, when it was added to section 330. The Proposal is instead premised on an elastic and

unstable interpretation of section 330 that permits the Bureau to redefine a game listed in a century-old statute any time the Bureau writes a new regulation.

Second, the Proposal also misapplies *Gosset*'s holding that a game is unlawful if its rules are identical to, or have only slight deviations from, the established rules of a prohibited game. In *Gosset*, the court ruled that a defendant could not evade the Penal Code by making an *inconsequential* change to a prohibited game, such as removing a few cards from the deck—a change so minor that it would likely go unnoticed by the players. But the converse proposition is what matters here: A more than slight change to game rules *does* distinguish a new game from a prohibited predecessor. Indeed, no court has *ever* interpreted section 330's prohibition of a specific game to encompass a later variation of the game with more than slightly different rules, format, or strategy. The Proposal disregards *Gosset* by prohibiting a broad swath of blackjack-style games that all have more than slightly different rules, strategies, and odds from Nineteenth Century Twenty-One.

In addition, the Proposal conflicts with the Attorney General's own longstanding interpretation of *Gosset*, which has not changed since that case was decided over a century ago. Indeed, as early as 1903 (less than twenty years after "twenty-one" was added to section 330), the Attorney General opined that, to charge a defendant with playing a prohibited game, the information must show that "the game is practically the same as the one charged in order to fall within the definition of the term." (Ops.Cal.Atty.Gen. 914, p. 3-914 (Nov. 28, 1903) [citing *Gosset*].)

(2) *Tibbetts* Rejected the Argument that Games that Have Evolved Since 1885 Are Prohibited

The Proposal also conflicts with *Tibbetts v. Van De Kamp*, which confirms that section 330's prohibition of a specific game does *not* apply to any later variation of the game that has more than slightly different rules or features. (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 395.)

Tibbetts assessed whether Penal Code section 330's ban on stud horse poker encompassed the game, Texas hold'em. The court first analyzed how stud horse poker was played in 1885 and compared the rules and method of play of that game to contemporary Texas hold'em. (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 395.) Expert testimony showed that the games had "different mathematics, different odds, different strategies, different betting opportunities and sequence …." (*Ibid.*) Consequently, the court found determinative differences in the games' "format and strategy," which meant that section 330's prohibition on stud horse poker did not preclude play of Texas hold'em. (*Ibid.*)

The court expressly rejected the Proposal's premise that section 330 prohibits games that are similar to, or share particular characteristics with, games enumerated in the statute. That interpretation of section 330 would mean that games "which have evolved since 1885 and which continue to evolve are prohibited." (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 396.) Moreover:

> Such result would also be contrary to fundamental rules of construction of criminal statutes: We cannot create an offense by enlarging the statute, or by inserting or deleting words, nor should we do so by giving a false meaning to its words. Such a practice makes it impossible for anyone to rely on the written word of the legislature.

(*Id.* at p. 396 [quoting *People v. Baker* (1968) 69 Cal.2d 44, 50] [cleaned up].)

Following *Tibbetts*, the Legislature amended section 330 in 1991 to remove stud horse poker. In so doing, the Legislature expressly approved of the *Tibbetts* court's interpretation of section 330. The Legislature stated: "It is the intent of the Legislature, by this act, to clarify the effect of Section 330 of the Penal Code on card room gaming in conformance with the holding in *Tibbetts v. Van de Kamp*, 222 Cal. App. 3d 389." (Stats. 1991, ch. 71, § 2.)

The Proposal is irreconcilable with *Tibbetts* and the Legislature's ratification of its approach. It is settled that a game is not prohibited merely because it shares features with, or is a derivative of, a game prohibited by section 330. By prohibiting modern blackjack-style games, *without* addressing the significant differences between those games and Nineteenth Century Twenty-One, the Proposal unlawfully enlarges section 330 and gives false meaning to the plain language of the statute.

(3) *Oliver* Confirms that Penal Code Section 330 Does Not Ban Variants of the Enumerated Games

The Proposal's mistaken premise is further refuted by *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397 (*Oliver*)—an especially telling conflict when the Bureau's concurrent proposal concerning player-dealer rotation relies heavily on *Oliver*. As in *Tibbets*, the respondents in *Oliver* argued that a new style of blackjack, "Newjack," ran afoul of section 330's ban on twenty-one because the statute supposedly prohibited "all variations" of the games enumerated therein. The respondents' brief urged:

> By prohibiting "any game of … twenty-one" the legislature prohibited all variations of "twenty-one."… Because NewJack was designed as a

> close substitute for twenty-one, is played in a fashion very similar to twenty-one, and provides very similar risks and rewards to twenty-one, it is merely a poorly disguised version of twenty-one which section 330 prohibits.

(Respondents' Brief, *Oliver v. County of Los Angeles* (Cal.App.2d Dist., Mar. 24, 1998, No. B113027) 1998 WL 34114120, at *14, *27.) The Court of Appeal disagreed. Because Newjack was not one of the games "specifically mentioned" in section 330, it was not unlawful by reason of the prohibition on "twenty-one." (*Oliver*, *supra*, 66 Cal.App.4th at p. 1401.)[9]

The Proposal is plainly inconsistent with *Oliver*. The Proposal asserts that any blackjack-style game is *per se* unlawful if the rules, among other things, (1) permit players to "bust," or (2) designate that a tied hand value counts as a no-win or a dealer-win, rather than a player-win. (See Proposal, § 2074(a).) Newjack is a blackjack-style game that includes a bust rule and makes ties a no-win. (See *Oliver*, *supra*, 66 Cal.App.4th at p. 1405.) According to the Proposal, Newjack constitutes a prohibited game of "twenty-one." According to *Oliver*, Newjack does not.

The Proposal contravenes precedent and therefore exceeds the scope of the Bureau's authority.

D. The Bureau's Misinterpretation of Section 330 Conflicts with Vital Interpretive Canons

The Proposal's novel interpretation of section 330 also lacks authority because it conflicts with at least four important rules of statutory interpretation.

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[9] Some cases note that, in contemporary dictionaries, blackjack is listed as an alternative name for twenty-one. (See *Oliver*, *supra*, 66 Cal.App.4th at p. 1401, fn. 1; *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 466, fn. 1; *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 609, fn. 5; *Tokar v. Redman* (1956) 138 Cal.App.2d 350, 354; see also *Wallace v. Opinham*, (1946) 73 Cal.App.2d 25.) But none of those cases attempts to define twenty-one, examine its rules, or interpret section 330's reference to that game. Nor does the relationship between blackjack and twenty-one have any bearing on the analysis or outcomes in those cases. The Supreme Court has held that these sorts of conclusory and immaterial statements, even in its own opinions, are not instructive, let alone binding. (See *Trope v. Katz* (1995) 11 Cal.4th 274, 284; *Stockton Theatres, Inc. v. Palermo* (1956) 47 Cal.2d 469, 474; *People v. Squier* (1993) 15 Cal.App.4th 235, 240.)

First, by inserting blackjack into section 330's list of specifically prohibited games, the Proposal ignores the basic maxim that a statute's express mention of certain things implies the exclusion of others. *Second*, the Proposal contravenes important due-process principles by converting section 330 into a malleable prohibition against an ever-evolving list of games. *Third* and relatedly, the Proposal violates the rule of lenity by interpreting section 330 as criminalizing games that are not plainly prohibited by that statute. *Fourth*, the Proposal improperly reverses the Bureau's own decades-long practice of approving blackjack-style games, notwithstanding that, under the doctrine of legislative acquiescence, the Legislature's decision not to overrule that practice creates a strong inference that the Legislature intends that such games are lawful.

(1) The Bureau's Interpretation Conflicts with Basic Principles of Statutory Construction

Section 330 prohibits a limited set of *specific* games—not variations of those games or games with somewhat similar rules. Under the ordinary rules for statutory construction, a statute that contains a specific list of prohibitions must be construed to exclude others. (*Capistrano Union High School Dist. of Orange County v. Capistrano Beach Acreage Co.* (1961) 188 Cal.App.2d 612, 617 (*Capistrano Union High School*); *Lake v. Reed* (1997) 16 Cal.4th 448, 466.) Because section 330 prohibits "twenty-one" and says nothing of "blackjack," the Bureau cannot properly read Modern Blackjack into the statute. (*TRC Operating Co., Inc. v. Chevron USA, Inc.* (2024) 102 Cal.App.5th 1040, 1075 [explaining that the "express language" of a statute is the best indicator of legislative intent].)

If the Legislature wants to ban Modern Blackjack or any other game not currently listed in section 330, it is the Legislature's responsibility to make that change. (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 396; see also *City of San Joaquin v. State Bd. of Equalization* (1970) 9 Cal.App.3d 365, 374 [striking down regulation that sought to correct perceived flaws in governing statute because "[i]t is fundamental that an administrative agency may not usurp the legislative function"].) The Legislature knows this. Thus, in 1891, the Legislature amended section 330 to add "hokey-pokey," a four-card variation of stud poker, notwithstanding that the statute already prohibited "stud horse poker," a *five*-card variation of the game. (See 9 Ops.Cal.Atty.Gen. 108 (1947).) Such a change would have been unnecessary if the Legislature expected section 330 to apply to variations on prohibited games.

All signs indicate that section 330's omission of Modern Blackjack is intentional. After all, Modern Blackjack is and has been one of the world's most popular gambling games since at least the 1950s. (Schwartz Report, Ex. A at pp. 9–

10.) The Legislature could have easily added Modern Blackjack to section 330 when it last amended the statute in 1991, but it chose not to. (See Stats. 1991, ch. 71, § 2.) That decision is not surprising: The Legislature has not added *any* game to section 330 since 1891; instead, it has relied on the "banking or percentage game" component of the statute as a more "flexible" means of reaching the game *features* that section 330 ultimately aims to prohibit. (*Sullivan*, *supra*, 189 Cal.App.3d at p. 679; see Part II.A, *supra*.) Under this comprehensive statute, the few games that have been specifically prohibited since the Nineteenth Century remain barred, but any other game—including blackjack—is unlawful only if it is played as a banking or percentage game. (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 396.) The Bureau "has no authority to enact a regulation which conflicts with [this statutory scheme.]" (*Henning v. Division of Occupational Safety & Health* (1990) 219 Cal.App.3d 747, 759.)

(2) The Proposal Fails to Respect Due-Process Principles and Related Interpretive Canons

The Proposal's new, expansive interpretation of section 330 also conflicts with settled principles of due process and proper construction of criminal statutes. The basic principles are familiar: Statutes must be interpreted to give the public fair notice of what conduct is prohibited. (*Papachristou v. City of Jacksonville* (1971) 405 U.S. 156, 162; *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108; *Colautti v. Franklin* (1979) 439 U.S. 379, 390.) A criminal statute, in particular, "should not be interpreted to cover an alleged offense which is not plainly in its terms." (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 395 [quotation marks & citation omitted]; cf. *Walker*, *supra*, 194 Cal.App.3d at p. 1305 (dis. opn. Newsom, J.) [percentage-game prohibition in section 330 is void for vagueness because "it does not adequately or reasonably define the conduct sought to be prohibited"].) By interpreting the criminal bar on "twenty-one" to cover blackjack-style games, the Proposal creates one of two serious due-process problems.

On the one hand, to the extent that the Proposal assumes that the games enumerated in section 330 are not defined by their established, historical rules but rather by their *evolution over time*, then its interpretation renders section 330 unconstitutionally vague because it would be impossible for the public to know how to identify a game listed in the statute. For example, for the Proposal here to have any basis in section 330, the meaning of "twenty-one" would need to change from one period to another. As explained above, however, California courts have already rejected this unconstitutional approach: To prevent the scope of section 330 from changing as games evolve over time, games enumerated in the statute must be defined by the rules in use at the time those game were prohibited. (See *Tibbetts*,

supra, 222 Cal.App.3d at p. 396.) Interpreting section 330 in that manner is the only way to avoid the constitutional problem that would otherwise arise. (See, e.g., *Gomez v. United States* (1989) 490 U.S. 858, 864 [discussing constitutional avoidance principles]; *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230 [same].)

On the other hand, if the Proposal assumes that section 330 prohibits games *similar to* those enumerated in section 330, then the statute would be unconstitutionally vague because it would impossible for the public to know what games are prohibited by the statute. How similar is similar enough to be criminal? Section 330 states no standards for determining whether two games are similar. For example, if there are 20 discrete game rules in the definition of blackjack, then by what criteria does one decide which rules (or how many rules) are material to the issue of similarity? And just how different must those rules be from the rules of twenty-one before they cross the threshold from "similar" to "dissimilar"? Absent clear principles for answering those questions, the public would never be on notice of what the criminal law actually forbids. The context presented here puts this problem in especially stark relief: If the Bureau is correct that blackjack is the prohibited game of twenty-one, then casual participants in friendly low-stakes social games of blackjack are misdemeanants—and they surely do not know it.

The Bureau cannot resolve this vagueness concern by redefining section 330 through the present rulemaking and compelling cardrooms to conform with the Bureau's new vision of the statute by unilaterally revoking or modifying their gaming licenses. In our system, the prosecutor does not define the criminal law; the Legislature does. (See James Madison, Federalist No. 47 (February 1, 1788) ["The accumulation of all powers, legislative, executive, and judiciary, in the same hands … may justly be pronounced the very definition of tyranny."].)

(3) The Bureau's Interpretation Conflicts with the Rule of Lenity

As a criminal statute, Penal Code section 330 is also subject to the rule of lenity, which requires any ambiguity in criminal laws to be interpreted in favor of the persons who may be subjected to them. (*Tibbetts*, *supra*, 222 Cal.App.3d at p. 395.) Thus, "when two reasonable interpretations of a penal statute stand in relative equipoise," the appropriate course is to adopt the more lenient interpretation. (*People ex rel. Green v. Grewal* (2015) 61 Cal.4th 544, 565.) The rule of lenity serves two constitutional goals: (1) it "ensures that criminal statutes will provide fair warning concerning conduct rendered illegal;" and (2) it protects the separation of powers by recognizing that "legislatures" are responsible for

"defin[ing] criminal activity." (*People v. Avery* (2002) 27 Cal.4th 49, 57 [quotation marks omitted].)

The Proposal offends the rule of lenity. At the threshold, precedent makes clear that section 330's prohibition on "twenty-one" is limited to *Nineteenth Century* Twenty-One. But even if the caselaw were silent, it would be at least ambiguous whether the prohibition on "twenty-one" extends to Modern Blackjack. After all, section 330 does not define "twenty-one" or expressly identify *any* particular features of the game that the Legislature deemed objectionable. Nothing in either the statutory text or the legislative record suggests that the Legislature intended its prohibition of a specific game to extend to any and all games that may be similar to the prohibited game.

Even if the Legislature intended to prohibit all games similar to "twenty-one" (and, again, there is no evidence that it did), it would still be ambiguous whether Modern Blackjack is sufficiently similar to Nineteenth Century Twenty-One to run afoul of that prohibition. As discussed above, Nineteenth Century Twenty-One and Modern Blackjack have *substantial* rule differences, which completely distinguish the strategies, odds, and general nature of the game. Whether or not one could reasonably interpret the prohibition on "twenty-one" to cover games with such significant differences, it is, at the very least, just as reasonable to conclude that Modern Blackjack is *not* "twenty-one." The rule of lenity requires the Bureau to follow that narrower interpretation of section 330.

The lenity problem is unusually clear here because the Bureau—the agency tasked with applying section 330—has itself approved blackjack-style games for decades. Cardrooms have invested heavily in blackjack-style games based on the Bureau's representation that those games are lawful. To the extent that section 330's prohibition of "twenty-one" is subject to multiple, reasonable interpretations, the right interpretation cannot be the one that suddenly *criminalizes* games (1) that the Bureau has specifically authorized cardrooms to operate and (2) that are, in fact, operated by licensed cardrooms all over the state.

(4) The Legislature Has Acquiesced in the Settled Interpretation of Section 330

Under the doctrine of legislative acquiescence, "[l]awmakers are presumed to be aware of long-standing administrative practice and, thus[,] … the failure to substantially modify a provision … is a strong indication the administrative practice was consistent with underlying legislative intent." (*California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 843 [quoting *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18-19]; see also

California Highway Patrol v. Superior Court (2006) 135 Cal.App.4th 488, 501, *as modified on denial of reh'g* (Jan. 31, 2006) [explaining that a "legislative failure to modify a consistent and longstanding administrative interpretation, which the Legislature is presumed to know, may reflect legislative approval of the administrative interpretation"].)

That inference is especially compelling when the "Legislature has been very active" in a particular "area of the law." (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1015.) In that circumstance, the Legislature's decision not to disturb an administrative practice is "not just a matter of legislative inattention"; instead, it can be "presume[d]" that the Legislature "was aware of the administrative interpretation, which makes its acquiescence all the more significant." (*Ibid.*)

This doctrine fits the present circumstances hand-in-glove. For over *120 years*, the Bureau and the Attorney General have interpreted section 330 to apply only to games identical to, or (as discussed above) with only slight differences from, those listed in the statute. Indeed, at least as early as 1903, the Department of Justice interpreted section 330 as follows:

> … the vital question in this case is whether or not the playing of hokey-pokey, with the banking or percentage element eliminated, brings the game within the definition of the word hokey-pokey, for your proofs under the information *must show that the game is practically the same as the one charged in order to fall within the definition of the term*. The trend of the decisions, under gaming, seems to be that the offender cannot evade the law by simply changing the name of the game, or by effecting a *slight change* in the manner in which it is played.

(Ops.Cal.Atty.Gen. 914, pp. 3-914 to 4-914 (Nov. 28, 1903), italics added.) Relying on that interpretation, cardrooms have offered blackjack-style games for many decades. The Bureau has specifically authorized the operation of those games at cardrooms across the state since the GCA's game-approval process was initiated over twenty years ago.

The Legislature has never doubted—let alone overruled—the Bureau's approvals of blackjack-style games, nor has the Legislature indicated any disagreement with the Bureau's (and the judiciary's) longstanding interpretation of section 330 as prohibiting only games that are "practically the same" as an enumerated game. Much to the contrary, the Legislature has promptly *pushed back against* efforts to expand Section 330's scope. For example, less than a year after the *Tibbetts* court rejected the allegation that section 330's ambiguous bar on "stud

horse poker" covered a broad category of games, the Legislature amended section 330 to remove that game entirely, and expressly endorsed *Tibbetts*'s holding. (See Stats. 1991, ch. 71, § 2.) A decade later, the Legislature enacted Penal Code section 330.11, a statutory safe harbor that confirms the lawfulness of cardroom player-dealer games (a category that encompasses blackjack-style games).

Moreover, in 1997, the Legislature passed the GCA, a new and "comprehensive" regulatory scheme for legal gaming in the state. (Stats. 1997, ch. 867.) Blackjack-style games were already pervasive in cardrooms at that time. (See e.g., United States Patent Nos. 5,735,524; 5,275,415 [patents for cardroom blackjack-style games, filed in 1992 and 1993].) Yet, the Legislature chose not to differentiate those games from other types of legal games in the GCA, or in the numerous amendments to the law that it passed over the next twenty years. (See, e.g., Stats. 1998, ch. 603 [SB 1469]; Stats. 2000, ch. 1023 [AB 1416]; Stats. 2001, ch. 941 [AB 54]; Stats. 2002, ch. 738 [AB 2431]; Stats. 2007, ch. 176 [SB 82]; Stats. 2009, ch. 233 [AB 293]; Stats. 2011, ch. 391 [AB 156]; Stats. 2019, ch. 432 [AB 649].)

If the Legislature disagreed with the Bureau's approvals of blackjack-style games, it has had many years and many opportunities to directly address those approvals. Yet the Legislature has done precisely the opposite, leaving them intact at every opportunity. Under those circumstances—where the Legislature was undoubtedly "aware" of the Bureau's longstanding "administrative practice" of approving blackjack-style games, and where the Legislature was "very active" in this "area of law"—acquiescence principles show that the Bureau's *former* interpretation of section 330 was the correct one, and the Proposal's *new* interpretation is at odds with the Legislature's intent. (*Sara M.*, *supra*, 36 Cal.4th at p. 1015.)

III. The Proposed Regulations Lack Necessity

The Bureau has failed to identify any legitimate need for the proposed regulations. To meet the APA's "[n]ecessity" requirement, the Bureau must put forth "substantial evidence" demonstrating that a proposed regulation is necessary "to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific." (Gov. Code, §§ 11349, 11346.2, subd. (b).) The Proposal offers only two potential justifications for the proposed regulations, neither of which is adequate.

First, the Proposal states that the proposed regulations will help "regulated entities and the public [to] avoid engaging in unlawful gambling activities." (Initial Statement of Reasons (ISR) at p. 6.) But as explained above, regulations defining and restricting *blackjack* do not, in any way, further compliance with the Penal

Code's prohibition on "*twenty-one*." Equating blackjack with twenty-one conflicts with decades of judicial precedent and regulatory policy. Under the GCA, the very fact that the Bureau has approved blackjack-style games for over twenty years necessarily means that those games are *lawful*. (Bus. & Prof. Code, § 19943.5 [establishing that the play of a game "in the manner approved" by the Bureau is an "absolute defense to any criminal, administrative, or civil action"].) The Bureau is not helping anyone to "avoid engaging in unlawful gambling" by unilaterally expanding the criminal code to include a new category of games.

Second, the Proposal states that the proposed regulations are necessary "to ensure that 'permissible gambling will not endanger public health, safety, or welfare.'" (ISR at p. 6 [quoting Bus. & Prof. Code, § 19801, subd. (g)].) But the Proposal identifies no harm flowing specifically from the operation of blackjack-style games, or any practical reason to differentiate those games from other lawful gambling games. In other words, the Proposal gives no reason to believe that blackjack-style games affect public health, safety, or welfare differently from, say, pai gow-style games, baccarat-style games, or poker-style games.[10] It is particularly implausible to believe that the lines drawn in the proposed regulations between permissible and impermissible rule variants have anything to do with public health, safety, or welfare.

Indeed, we are unaware of the Bureau having ever received even a *complaint* from a local government or private citizen raising health, safety, or welfare concerns about blackjack-style games—let alone a complaint that substantiates concerns at the level that formal rulemaking would demand. To the contrary, numerous municipalities have submitted comments *opposing* the Proposal on the ground that restricting cardrooms' blackjack-style games will have serious negative impacts on their "cities, their residents and their businesses." (See, e.g., California Cities for Self-Reliance Joint Powers Authority, "Draft Concept Language for Blackjack-Style

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[10] The *only* materials that the Proposal identifies in support of the rule changes are a handful of gaming guides that note that blackjack is "sometimes called Twenty-One." (ISR at p. 14.) The Proposal does not include or cite to (1) any substantive analysis of Nineteenth Century Twenty-One, or (2) any information about the effects of currently-approved blackjack-style games on public health, safety, and welfare. This alone means that the Bureau has failed to meet its burden for promulgating the regulations. (See *Sims v. Dept. of Corrections & Rehabilitation* (2013) 216 Cal.App.4th 1059, 1074 [explaining that an administrative agency must provide *factual support* for its conclusion that a proposed regulation is necessary and preferable to reasonable alternatives]; *Western States Petroleum Assn. v. Bd. of Equalization* (2013) 57 Cal.4th 401, 431 [same].)

Games and Rotation of Player-Dealer Regulations" (Oct. 26, 2023), p. 2.) These comments warn, among other things, that the proposed regulations will (1) undermine public health and welfare by "drastically reducing" cardroom tax revenues that municipalities put towards essential services, and (2) threaten public safety by encouraging individuals to gamble outside of licensed establishments, "which has historically resulted in increased crime, prostitution and other illegal activities." (*Ibid*.) The Bureau itself estimates that the proposed regulations will result in *lower* tax revenues (particularly in "lower income counties"), *fewer* jobs for California workers, and *reduced* investment in the California economy. (Notice of Proposed Rulemaking (NPR) at pp. 6–8.)

The only potential public benefit that the Bureau identifies in connection with the Proposal—that the proposed regulations might "reduce problem gambling, crime, and attendant socioeconomic problems" (Economic and Fiscal Impact Statement (EIS) at p. 3)—lacks foundation. The Bureau declines to quantify this supposed benefit due to "data insufficiency" (*id.* at p. 2), so by the Bureau's admission, there is no quantitative evidence supporting a "problem gambling" justification. More still, the supporting documentation for the Proposal refutes any possible claim of a reduction in problem gambling. The Bureau's Standardized Regulatory Impact Analysis (SRIA) makes clear that the Proposal is not designed to curb gambling activity or any related externalities, nor will it have that effect. (See, e.g., SRIA at p. 8 [estimating that "the proposed regulations will have a negligible limiting effect on [problem] gambling"].) The great majority of commercial gambling in the state occurs at tribal casinos, which offer house-banked blackjack games but would *not* be subject to the proposed regulations. (See *id.* at pp. 17, 22.) The SRIA assumes that the majority of customers for games restricted by the new rules would not refrain from gambling, but instead would move to tribal casinos (making those casinos "[t]he primary beneficiaries of the proposed regulations" (*id.* at p. 22)) or to new, alternative games at cardrooms. Cardroom patrons who do not opt for one of these options may still not refrain from gambling but rather, shift to online gaming (a possibility the SRIA acknowledges) or to illegal gambling operations (as the municipalities fear).

None of the effects described above would ameliorate problem gambling, and most would make it worse. No reason exists to believe that a change in the types of games offered (or where they are offered) would lead to problem gamblers ceasing gambling entirely; those gamblers would continue to gamble *somewhere*. Cardrooms maintain a robust monitoring system for problem gambling, as required by law. Among other things, cardrooms participate in a problem-gambling prevention program, wherein they prohibit players identified on a statewide exclusion list from participating in cardroom games. (Cal. Code Regs., tit. 4, §§

12460-12466 (Program for Responsible Gambling).) But none of California's tribal casinos has opted into this statewide problem-gambling prevention program. From a problem-gambling perspective, players who continue to patronize cardrooms would be no better off if the Proposal were implemented; they would continue to play cardroom games and continue to benefit from the addiction resources and safeguards that cardrooms offer. But for players who shift to tribal casinos or online gaming (both of which are subject to limited regulatory oversight by the State), the potential for problem gambling will increase. Illegal gambling operations are by definition beyond any oversight, and may pose particular threats to problem gamblers.

Notably, the only comments published in support of the Proposal have come from Tribes—the separate sovereigns that control most of the gaming in California—which seem to be promoting their own economic interests, rather than any principled notion of the public interest. The Tribes make abundantly clear in their comments that they favor the Proposal because (and only because) they expect that the new rules would redirect some customers and revenue from cardrooms to the Tribes' own casinos. But the Tribes have no apparent concern for how that loss of economic activity will affect cardrooms or their communities. The Bureau, on the other hand, is charged with ensuring that any rule it adopts is (1) "reasonably necessary" to address a specific problem, and (2) tailored to minimize adverse effects on the California economy. (See Gov. Code, § 11346.2, subds. (b)(1), (b)(4).) The Bureau has failed to explain how the Proposal meets those requirements, when the principal effect of adopting it would be to drive business, taxes, and jobs *away* from California communities.

IV. Specific Aspects of the Proposed Regulations Fail to Meet the Standards for Adoption Under the Administrative Procedure Act

A. Section 2010(h) ("Round of Play")

Section 2010(h) of the Proposal defines the term "[r]ound of play" as a single hand. It is unclear what this change is intended to accomplish, but as written, it creates confusion and contradicts Penal Code section 337j(f).

Section 337j(f) refers to determining fees "prior to the start of play of any hand *or* round." (Pen. Code, § 337j(f), italics added.) Under blackletter rules of statutory interpretation, "hand" and "round" in section 337j(f) cannot be defined to be the same because each word or phrase in a statute must be given independent meaning and effect. (See *Dyna-Med*, *supra*, 43 Cal.3d at p. 1387.) By equating "hand" and "round of play," the Proposal is in considerable tension with section 337j(f). And yet, because section 337j(f) states that it is "dispositive of the law

relating to the collection of player fees in gambling establishments," the Bureau is not free to alter that law. (Pen. Code, § 337j(f).)

The only use of "round of play" is in current Bureau regulation, section 2070(e), which makes it an unsuitable method of operation to fail to determine or collect fees before a hand or round of play. Section 2070(e) copies the terminology and requirements of Penal Code section 337j(f). Both the statute and existing regulation provide that collection of the fees shall occur before every hand or round of play. But if a round of play is defined to be one hand, then the section 2070(e) will conflict with section 337j(f). At the very least, the Bureau's use of different meanings in its regulations from what is in Penal Code section 337j(f) raises questions about whether the two provisions would embody different standards.

In any event, the purpose of the Bureau's language is unclear. We are aware of no controversy over how to apply section 337j(f), yet this definition in a regulation dealing with Modern Blackjack could be understood to affect rules that apply to many other games. As explained above, the Government Code requires the Bureau to articulate the basis for any rule change, and do so with appropriate clarity. If the Bureau believes that this change is necessary, it must articulate a clear rule and explain its reasoning so that the industry can offer more meaningful comment.

B. Section 2073 (Defining Blackjack)

Section 2073(a) defines "blackjack" by listing 20 rules that correspond to the contemporary version of that game. No mention is made of Nineteenth Century Twenty-One—the game that is actually prohibited by section 330—or its rules.

Section 2073(b) lists several types of game modifications that do not distinguish a game from "blackjack," as defined in subpart (a). No justification is offered for why any of these modifications alone or in combination can never be sufficient to distinguish a game from the prohibited version of "blackjack."

The premise of this section is that a game is prohibited by section 330 if it shares certain elements with one of the prohibited games. As explained in Part II, above, this is not the law. Subpart (b) transgresses the well-settled rule that only slight variations on prohibited games fall within the ambit of section 330.

Moreover, by categorically dismissing different potential game-rule modifications, subpart (b) violates the settled principle that whether a game violates section 330 is a fact-specific issue, which requires an individualized determination based on the game rules and evidence. (See *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 249 ["Whether a

particular game falls within the proscription of section 330 presents a factual question."].) Under the Proposal, the Bureau would not consider the rules of a particular game on their own terms when determining whether a game is permissible. For example, if a blackjack-style game had one of the rules specified in subpart (b), the Bureau would apparently not assess whether that rule, in combination with *other* game rules, made the game different from any game enumerated in section 330—no matter how substantially the rule affected the game's format, odds, or strategy. The Proposal establishes a novel framework that erroneously treats entire categories of game modifications as irrelevant.

In practice, section 2073(b) will conflict with precedent by barring approval of games that have more than slight—indeed quite substantial—differences from Nineteenth Century Twenty-One, and yet the Proposal offers no justification for that result. For example:

- Nineteenth Century Twenty-One is marked by a "bust" rule: players who hit to more than 21 automatically lose. A game with a "no bust" rule, which allows a player to push when they hit to more than 21, is clearly different, and without precedent in either Nineteenth Century Twenty-One or Modern Blackjack. The rule significantly changes the strategy for a player hitting on 12 to 14 because there is less risk to hitting. Yet, the Proposal states without explanation that a "no bust" modification makes no material difference.

- Adding jokers that have a point value of 2 or 12, act as a wild card with any value of 1 through 11, or automatically result in a player win or a bonus can dramatically change the odds and strategy of the game. Those too are without precedent in either Nineteenth Century Twenty-One or Modern Blackjack. Yet the Proposal makes a categorical determination that adding jokers is never a relevant game modification, regardless of how the joker is used. The Proposal offers no explanation for this categorical determination.

- Nineteenth Century Twenty-One has the same target point count throughout the hand, as does Modern Blackjack. Yet, the Proposal prohibits variations of blackjack even if those games use more than one target point count: one on the initial deal, and one or more on the subsequent stages of play. The Proposal offers no justification for finding that the addition of a moving target point count can never be a material rule change, and no justification exists.

- Assigning cards different values on the initial deal can affect player odds and strategy, leading to new betting opportunities. Once again, such rules are without precedent in either Nineteenth Century Twenty-One or Modern Blackjack. Yet again, without any legal justification, the Proposal states that this kind of modification makes no material difference.

Any of the modifications above, alone or in combination with other rules, will affect a game's format, sequence, odds, and player strategies—making the game more than slightly different from Nineteenth Century Twenty-One. By removing these modifications from consideration, subpart (b) misinterprets *Gosset*—which was concerned only with slight and inconsequential changes to game rules—and contradicts *Tibbetts*.

Section 2073(c) provides that the new prohibition on "blackjack" applies to any game with a "variation of the number '21' or the word 'blackjack' in its name." Such categorical restrictions on game names are unjustified and legally invalid, as explained in Part IV.E below.

C. Section 2074 (Variations; Required Rules)

Section 2074(a) provides that a game that meets the definition of "blackjack" in section 2073 may only be approved if it has four specific rules. There is no legal justification for requiring any one of these rules, let alone all four, and the Proposal does not even attempt to justify its approach. Worse, there is no indication that the Bureau even considered whether a game featuring the four rules required by the Proposal would be a viable game (much less a practicable alternative for an approved blackjack-style game in a cardroom setting).

Subpart (1) requires that the game lack a "bust" rule, meaning the winner must be judged solely by whichever player is closest to the target point count. But "busting" (a rule that players automatically lose if they exceed a specific number) is a component of many games aside from Nineteenth Century Twenty-One and Modern Blackjack. The Proposal fails to explain why a game that is similar to Modern Blackjack but uses a different bust number (e.g, 30, rather than 21) is not sufficiently different from the prohibited game, Nineteenth Century Twenty-One, especially when the game rules are considered as a whole.

Subpart (2) requires that the target point count remain the same throughout the game. But there is no legal reason why a game is the same as Modern Blackjack *or* Nineteenth Century Twenty-One if it *differs* from those games by its use of more than one target point count (for example, one on the initial deal and one

on the subsequent stages of play, and perhaps yet another for hands with 4 or more cards). If anything, the fact that both Modern Blackjack and Nineteenth Century Twenty-One use a fixed target point count should mean that a game without a fixed target point count is *dissimilar* to those games. Such differences could have a material effect on the odds and strategy of the game.

Subpart (3) prohibits a natural 21 from automatically winning. The Proposal offers no justification—and none exists—for why a game should be prohibited based on this feature alone, regardless of whether the game has other, much more significant modifications.

Subpart (4) requires that the player win in the event of a tie. The Bureau claims that this rule is necessary "to differentiate blackjack-style games from the prohibited [game]" and to "giv[e] players a better advantage and more opportunities to win than in the prohibited [game]." (ISR at p. 11.) But both justifications are flawed.

First, the Bureau's suggestion that a blackjack-style game must designate ties a player-win to be sufficiently different from "twenty-one" is factually and legally baseless. For starters, the standard rule for ties in all cardroom blackjack-style games—that ties count as a draw or "push"—already distinguishes those games from Nineteenth Century Twenty-One, in most variants of which the *dealer* won ties. (See Part II.B(1), *supra*.) Further, the blackjack-style game in *Oliver*, Newjack, included the rule that ties count as a push; yet the Court still did not find that Newjack violated section 330's prohibition on twenty-one. (*Oliver*, *supra*, 66 Cal.App.4th at p. 1409.) Finally, the Bureau itself avers that the disposition of ties is not an "essential element" of blackjack (much less, twenty-one). (See ISR at pp. 15–16 [identifying three rules that the Bureau asserts distinguish blackjack from "permissible alternative[s]," without mentioning ties].) Thus, even if there were a legitimate basis to categorically restrict blackjack-style games (and none exists), the Proposal's requirement that players win ties would still be unjustified and unduly restrictive.

Second, converting ties from a push to a player-win would have such a significant effect on the game odds that it would, as a practical matter, render the game unplayable—an issue the Proposal wholly fails to consider. (See *California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 648–649 [striking down regulation because the issuing agency failed to consider practical issues that made compliance with the regulation "burdensome, onerous, and unreasonable"].) In cardroom blackjack-style games, each player is systematically offered the opportunity to take the player-dealer position, which comes with a small statistical advantage (typically, an advantage of less than 2%, see Shackleford Report, Ex. B at p. 7).

This statistical advantage is the player's incentive for temporarily assuming a position that lacks discretion and comes with the potential (depending on particular bet sizing) for betting against multiple other players. But a rule resolving ties in the player's favor would remove that incentive by swinging the odds approximately *ten percent* the other direction, such that the *player* would have an advantage of eight percent or more. (See *id.* at p. 7, fn. 2.) Under that rule, no reasonable participant in the game would ever willingly accept the player-dealer position, so the game would be unplayable.

More generally, the Bureau has offered no justification for mandating game changes because they purportedly "giv[e] players a better advantage and more opportunities to win than in the prohibited form of Blackjack." (ISR at p. 11.) Eliminating or decreasing the size of the player-dealer's advantage would directly conflict with the Bureau's rotation proposal, the stated purpose of which is to increase the frequency with which players accept the player-dealer position. In all events, the Bureau cannot predictably alter the odds of any game by mandating a single game rule in isolation. And even if the Bureau could properly regulate game rules in this way to achieve particular odds, any number of options would make more sense than the proposed tie rule. For example, the Bureau could have considered mandating that players be entitled to place insurance bets—a player-friendly feature of Modern Blackjack, which did not appear in Nineteenth Century Twenty-One. (See Part II.B(1), *supra*.)

As a whole, section 2074(a) errs by establishing categorical rules for game differences. This section decrees that any lawful blackjack-style games must have four specific game rules—without explaining why those particular rules are necessary to distinguish a game from Nineteenth Century Twenty-One, and without considering whether the game has other rule differences that, together, make the game more than slightly different from Nineteenth Century Twenty-One in terms of odds, strategy, or play. Instead of calling for a holistic analysis of the games that cardrooms submit for approval to ensure compliance with the Penal Code (as the GCA instructs the Bureau to do), the Proposal launches the Bureau into the project of inventing a new and untested variant of Modern Blackjack, which it now proposes to make the only permissible variant of the game. The Bureau is not tasked by the GCA with developing or prescribing game rules and lacks the expertise to do so.

Section 2074(b) provides that a game cannot be approved if the name includes the number "21" or the word "blackjack." Again, such restrictions on game names are invalid, as explained in Part IV.E below.

D. Section 2075 (Modification and Revocation)

Section 2075(a) requires a cardroom that offers a blackjack-style game prohibited by the proposed regulation to submit an application to modify that game. But a cardroom should be able to submit a *substitute* game for expedited review rather than being compelled to modify an existing game. Another person or cardroom may develop or have a suitable or newer game that the cardroom wishes to use. Moreover, if these regulations are overturned or enjoined, the cardroom may wish to continue using the previously approved game, rather than be limited to a game that has been modified to accommodate a regulation that is no longer in effect. The regulation should not prevent cardrooms from using currently approved rules in the event the regulation is enjoined or invalidated. The review that the Bureau would undertake would be the same in either case, because we understand that the Bureau's practice when reviewing modifications is to re-review the whole set of game rules. In all events, the 60-day time period provided by this subsection is too short. We suggest a longer time period—at least 120 days—to provide sufficient time for cardrooms to submit any necessary applications. A longer time period would be particularly necessary if the Bureau proceeds at the same time with both this rulemaking and the rulemaking concerning rotation of the player-dealer position, because cardrooms would need to address both sets of new rules at once.

Section 2075(d) requires modification of games with names that include the number "21" or the word "blackjack." Again, these restrictions on game names are invalid, as explained in Part IV.E below.

Section 2075(e) provides that, if the Bureau does not receive a request to review or an application to modify within a certain timeframe, it shall deem the corresponding game non-compliant. As discussed in Part 0 above, the procedure described in this section is inconsistent with the GCA, exceeds the Bureau's authority, and lacks constitutional due process protections, including notice of the reasons for denying a game or game modification and the right to a hearing before a neutral decision-maker before an existing game approval is revoked. The revocation of an existing game approval described in Section 2075 involves no hearing at all; unilateral notice from the Bureau is all that would be required to revoke an approval. Such summary action by executive fiat is clearly unconstitutional. The Bureau must specify why a game is being revoked or rejected, and there must be a hearing on that decision. The procedures outlined in the GCA, under which revocations proceed to a neutral hearing before the Commission, are not optional statutory paths—they are the embodiment of the fair and neutral process that is due to cardrooms, their employees, and the communities

those cardrooms support. (See *Bauer*, *supra*, 75 Cal.App.4th at p. 1294 [providing that the State may revoke a business permit "only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation"] [quotation marks omitted].)

E. Sections 2073(c), 2074(b) and 2075(d) (Game Names)

As discussed above, three sections of the Proposal categorically restrict the use of certain terms in game names. Section 2073(c) defines any game that uses the number "21" or the word "blackjack" in its name, or variations of those words, to be the game that is prohibited under section 2073(a), *regardless of the game rules.* Section 2074(b) prohibits game names using the number "21" or the word "blackjack." And section 2075(d) provides that, where an approved game includes "blackjack" in its name, the cardroom must submit an application to modify the game name.

These sections lack authority, necessity, and consistency. To begin, these sections conflict with the GCA, which vests the Commission—not the Bureau—with the authority to regulate advertising. They also violate the industry's commercial speech rights under both the state and federal constitutions. And these sections rely on the same faulty interpretation of section 330 that conflates twenty-one as played and prohibited in 1885 and blackjack as played legally today. The Bureau cannot prohibit a game based on its name or dictate game names in this fashion.

(1) The Prohibition on Game Names Violates the Gambling Control Act

At the threshold, the Bureau has not provided an adequate rationale for banning games because they have the number "21" or the word "blackjack" in their names, or any variation thereof, like "21st Century," "Black" or "Jack." The Proposal itself acknowledges that "[w]hether a game is prohibited by law depends on the manner of play, not the name of the game." (ISR at p. 4.) The Bureau's only explanation for the proposed restriction on game names is the one-sentence remark that the restriction aims "to protect the public from being confused or misled as to which games are offered by a gambling establishment, and which games are legally permissible." (*Id.* at p. 10.) As discussed above, the Bureau's justification is hollow because no California statute prohibits anyone from offering a game called "blackjack," and there is no evidence the use of that word has caused consumer confusion. Regardless, if the Bureau is concerned that game names that include the word "blackjack" are somehow confusing or misleading, then the process for disapproving such names must be addressed in *Commission* regulations. The Bureau lacks authority to issue such regulations on its own.

Section 19841(f) gives the Commission the authority to regulate advertising in gaming. (See Bus. & Prof. Code, § 19841(f).) Such regulations may "[p]rovide for the disapproval of advertising by licensed gambling establishments that is determined by the [*Bureau*] to be deceptive to the public." (*Ibid.*) But it is, in every instance, the Commission's role to draft and adopt the regulation setting the standards—not the Bureau's. When a statute gives different, even coordinated, responsibilities to two agencies, one agency cannot assume the other agency's authority. (See *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 391–392 ["the regional centers and DDS have distinct responsibilities in the statutory scheme: … that of DDS is to promote the cost-effectiveness of the operations of the regional centers, but not to control the manner in which they provide services"].)

(2) The Prohibition on Game Names Violates Commercial Speech Rights

The proposed restrictions on game names are also improper because the Bureau has not made the requisite showing to justify a regulation restraining commercial speech. A regulation that tells cardrooms what words cannot be used to name or promote a good or service undeniably implicates commercial speech rights.

Commercial speech is protected by the United States Constitution. (U.S. Const., 1st Amend.; *Virginia State Bd. of Pharmacy v. Virginia Citizen's Consumer Council, Inc.* (1976) 425 U.S. 748, 748.) Under the California Constitution, free speech similarly embraces "all subjects," including commercial speech. (Cal. Const., art. I, § 2, subd. (a); *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 491, 511–512 (*Gerawan*) [explaining that the California Constitution's protection of commercial speech is "even broader and greater" than the First Amendment's] [quotation marks omitted].)

Cardroom advertising is commercial speech and thus entitled to free-speech protections. Consequently, the power to regulate cardrooms does not include the power to prohibit or regulate truthful speech about their offerings. (See *Gerawan*, *supra*, 24 Cal.4th at p. 499 [finding that neither state or federal free-speech rights would allow "compelling one who engages in commercial speech to say through advertising what he otherwise would not say, when his message is about a lawful product or service and is not otherwise false or misleading"]; cf. *Greater New Orleans Broad. Assn. v. United States* (1999) 527 U.S. 173, 193 (*Greater New Orleans*) ["[T]he First Amendment mandates closer scrutiny of government restrictions on speech than of its regulation of commerce alone."].)

The government can regulate potentially misleading commercial speech only if: (1) the regulation serves a substantial government interest, (2) the regulation *directly and materially* advances the government's substantial interest, and (3) the regulation is *narrowly tailored* to serving that interest. (*Central Hudson Gas & Elec. Corp. v. Public Serv. Com.* (1980) 447 U.S. 557, 566; *Matal v. Tam* (2017) 582 U.S. 218, 245.) Advertising restrictions on "vice" activities like alcohol or gambling are subject to the same standard. (*44 Liquormart v. Rhode Island* (1996) 517 U.S. 484, 510–513.) The necessity for and effectiveness of a commercial speech regulation must be based on substantial evidence. "In this analysis, the Government bears the burden of identifying a substantial interest and justifying the challenged restriction." (*Greater New Orleans*, *supra*, 527 U.S. at p. 183.)

The Proposal fails to even grapple with this critical constitutional issue. The Proposal does not assert that the proposed restriction on game names directly and materially advances a substantial government interest—much less provide evidence in support of that assertion. The Proposal *implies* that it serves a governmental interest in preventing "the public from being confused or misled as to which games are offered by a gambling establishment." (ISR at p. 10.) But this justification is inadequate for two reasons. *First*, preventing consumer confusion is entirely irrelevant to the Proposal's stated purpose of enforcing section 330's prohibition on "twenty-one." *Second*, even if preventing consumer confusion qualifies as a substantial government interest in certain circumstances, the Proposal reflects no evidence (let alone *substantial* evidence) that barring cardrooms from using the words "blackjack" or "21" materially advances that interest. Indeed, there is no evidence that a cardroom's offering of a patented game like "No Bust 21st Century Blackjack" under its proper name has ever confused even one cardroom patron into thinking that the game is the same as either a particular version of blackjack offered by a modern Nevada casino or the version of twenty-one that the Legislature prohibited more than a century ago.

The Proposal also suggests that the government has an interest in preventing "the public from being confused or misled as to … which games are legally permissible" in California. (ISR at p. 10.) But again, the Proposal does not explain how the proposed restriction directly advances that interest. There is no evidence that the use of certain words in cardroom game names impacts the public's understanding of California law. Even if it did, the restriction is not "narrowly drawn" to prevent confusion as to which games are legal, given that it bars the use of the word "blackjack" (and unspecified "variations" of that word) notwithstanding that section 330 does not prohibit a game by that name. (See *Matal*, *supra*, 582 U.S. at pp. 245–247 [striking down a rule against disparaging trademark names

because it went "much further than is necessary to serve" the government's stated interest in protecting against discrimination].)

If the Bureau has a legitimate justification for the proposed restriction on game names, it must disclose that justification and provide the industry an opportunity to comment. If the Bureau cannot justify the proposed restriction, it cannot move forward with the Proposal as written.

(3) The Prohibition on Game Names Is Inconsistent with Penal Code Section 330

Setting aside free-speech issues, the Proposal is also improper because it prohibits games based on their names, rather than their rules. Doing so is neither consistent with nor necessary to effectuate section 330.

For example, if a cardroom wanted to operate a variant of Texas hold 'em and decided to call it "Poker 21" because any player that received a 2 and an ace in their initial two cards would receive a $21 bonus, that game would be prohibited—even though the game rules would be obviously different from *any* blackjack-style game. The same would be true of a pai gow poker game that was called "Pai Gow 21" because any player with a two-card hand of a 2 and ace received a bonus. Once again, the game would be denied approval although it had nothing to do with blackjack. And a blackjack-style game could use a target point count of 22, comply with every other requirement of the Proposal, and *still* be denied approval because it has a name like "21st Century Jackpot."

Applying section 330 to a game without regard for the game's rules conflicts with the entire body of precedent construing section 330 and, therefore, lacks necessity, authority, and consistency with law. After all, *Tibbetts* was not decided on the ground that stud horse poker and Texas hold 'em had different names—the court examined the *rules* of each game. Indeed, if the application of section 330 depended on the name of the game and not its rules, then all of the other restrictions in sections 2073 and 2074 would be unnecessary.

There also is no authority for banning the name of a game, like blackjack, that is not specifically mentioned in section 330. *Oliver* held that the game of Newjack is not prohibited by reason of being the game of twenty-one. (*Supra*, 66 Cal.App.4th at p. 1409.) Yet the Proposal would prohibit both blackjack and variations of blackjack, in conflict with *Oliver*. The Bureau cannot expand section 330 by prohibiting names that are not used in that section. (*Capistrano Union High School*, *supra*, 188 Cal.App.2d at p. 617.) It is well established that, when the Legislature specifies things in a statute, an agency cannot construe the statute to

include other things. (See, e.g., *Naidu v. Superior Court* (2018) 20 Cal.App.5th 300, 307 ["under the doctrine of *expressio unius est exclusio alterius*, the expression of one thing in a statute ordinarily implies the exclusion of other things"] [citations and quotation marks omitted].) In particular, an agency lacks authority to expand a specific statutory list. (See *Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429, 436–437.); *People v. Koester* (1975) 53 Cal.App.3d 631, 642; *Morse v. Municipal Court* (1974) 13 Cal.3d 149, 159.)

(4) The Prohibition on Game Names Lacks Clarity

The Proposal also lacks clarity because it does not explain what constitutes a "variation of the number '21' or the word 'blackjack.'" Indeed, it provides no indication of how the Bureau might determine whether a game name includes an impermissible variation on those words. For example, is "Jackpot", "Red Jack," "Billy Jack," "121," or "Super Jack" prohibited? For this reason, the regulation lacks the requisite clarity under the Administrative Procedure Act and violates the First Amendment by giving government officials standardless discretion to regulate speech. (See *City of Lakewood v. Plain Dealer Publishing Co.* (1988) 486 U.S. 750, 757 ["[A] licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship …"]; *Near v. State of Minnesota ex rel. Olson* (1931) 283 U.S. 697, 713–714.)

V. The Proposal Fails to Consider Reasonable Alternatives to the Proposed Regulations

Any proposed regulation must be accompanied by an Initial Statement of Reasons that "include[s] a description of 'reasonable alternatives to the regulation' and the agency's reasons for rejecting them." (Asimow et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2024) Ch. 23-G, ¶ 23:290 [quoting Gov. Code, § 11346.2, subd. (b)(4)(A)].) In particular, the discussion of alternatives must include a "description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives." (*Id.* ¶ 23:293 [quoting Gov. Code, § 11346.2, subd. (b)(4)(B)].)

According to the Proposal, the *only* alternatives that the Bureau considered were two potential adjustments to section 2074(a) of the Proposal, which identifies the required rules for "a permissible alternative to Blackjack." (ISR at p. 15.) One

alternative would have *added* to the list of required rules,[11] thereby prohibiting a *broader* universe of games. The Bureau rejected this alternative on the ground that the added rules were unnecessary to bar the "essential elements of Blackjack." (*Ibid.*) The other alternative would have trimmed "one or two" of the required rules—the Proposal does not specify which ones—and was rejected on the ground that omitting these rules would authorize a game that resembles a "prohibited form of Blackjack" (although the Proposal offers no explanation for why that would be so). (*Id.* at pp. 15–16.) In other words, the Proposal assumes without justification that any regulation must start by defining and prohibiting "blackjack" (rather than "twenty-one"). The only options that the Bureau considered concerned which features of blackjack to include on its list of rule and name changes that would be required to distinguish a "permissible alternative" to that game.[12]

The Proposal and the Bureau's considered alternatives share the same fundamental flaw: Prohibiting games because they share certain features in common with Modern Blackjack does nothing to further enforcement of section 330's bar on "*twenty-one*." (See Parts II and III.) The Proposal's construct of equating Modern Blackjack with Nineteenth Century Twenty-One is not only unjustified, but unduly burdensome for the industry because it categorically prohibits a broad swath of popular cardroom games that are not, by any measure, "practically the same" as the game that the Legislature prohibited in 1885. Identifying certain features of Modern Blackjack as *per se* unlawful compounds the problem by negating the Bureau's obligation to consider, on a case-by-case basis, whether a cardroom game has more than slight differences from a prohibited game.

There are at least two alternatives that would be far more defensible and less burdensome than the Proposal. It does not appear that the Bureau considered

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[11] Specifically, the Bureau considered mandating that king, queen, and jack cards be assigned a point value other than 10 and aces be assigned a set point value other than 1 or 11. (ISR at p. 15.) An even more restrictive version would have required that each type of card be assigned a unique point value. (*Id.* at p. 16.)

[12] The SRIA models two other alternatives, but neither is addressed in the Initial Statement of Reasons. The first alternative would provide a "three-year extension of the deadline for full compliance" with the Proposal. (SRIA at p. 39). That alternative is marginally better than the Proposal, but ultimately still suffers from the same fundamental flaws identified in these comments. The second alternative would "assume that cardroom gaming is prohibited for all categories of play." (*Ibid.*) That is obviously unlawful, and even the BEAR Report acknowledges that it is "completely hypothetical and in no way reflects policy intention." (*Ibid.*)

either. (See *Sims v. Dept. of Corrections & Rehabilitation* (2013) 216 Cal.App.4th 1059, 1068 [striking down a regulation where the issuing agency failed to consider reasonable alternatives, much less provide a credible "rationale for rejecting those alternatives"].)

First, accepting for sake of argument that the Bureau is authorized to define the games prohibited by the Penal Code (which it is not), then a clarification of section 330's bar on "twenty-one" should be accomplished by promulgating a definition of twenty-one that is consistent with the "established rules" of that historical game. A proposed, alternative regulation that takes this approach is set forth below.

Adopting the proposed alternative would be consistent with the prevailing case law interpreting section 330. (See Part II.C, *supra*.) It would be consistent with the Legislature's acquiescence in the Bureau's longstanding approach to section 330, as well as the rule of lenity. (See Part II.D(4), *supra*.) It would take account of the immense reliance interests that have developed as a result of the Bureau's practice of approving blackjack-style games. And literally every word that the Bureau says about the anticipated benefits from its proposed regulatory action would still be true—including that the Bureau would "provide a clear definition of what constitutes the prohibited game" of "twenty-one," provide "notice" to the regulated industry "of what game rules will not be approved," and ensure "consistent and fair evaluations of [blackjack-style] games using a known and established set of standards." (ISR at p. 6.) Indeed, publishing a historically accurate definition of Nineteenth Century Twenty-One would allow for much fairer evaluation of blackjack-style games than the Proposal. For one, the Bureau would be able to measure a blackjack-style game against the version of "twenty-one" that the law actually prohibits. For another, the Bureau would be able to holistically evaluate whether any given blackjack-style game has more than slight differences from twenty-one, as the law requires—rather than relying on the Proposal's categorical bars on certain game names and rules.

Second, if the Bureau is concerned with "fully implement[ing] the policies under the [GCA]" as the Proposal suggests (ISR at p. 16), then the Bureau should simply use its existing regulations and enforcement procedures to ensure that blackjack-style games are not played as banking and percentage games. This has been core of the Bureau's game-approval process for the last twenty years. As discussed in Part II.A, *supra*, section 330's list of specifically prohibited games is a product of a 150-year-old statutory framework that the Legislature allowed to fall into obsolescence long ago. (See *Sullivan*, *supra*, 189 Cal.App.3d at p. 679.) According to the courts, the "banking or percentage game" component of the statute

achieves the ultimate purpose of section 330, which has always been to prevent gambling establishments from taking a direct financial interest in the games that they offer, either by betting directly against the players (a banking game) or taking a percentage of the wagers (a percentage game). (*Ibid.*) Prohibiting a game because it allows an ace card to count as 1 or 11, or because its name includes a certain word, does nothing to further that statutory goal. (See *Tibbetts*, *supra*, 222 Cal.App.3d at p. 396 [declining to interpret the prohibition on "stud horse poker" to embrace all poker games with exposed cards because "the house percentage aspect of the game, not the face exposure of cards, was the element considered … objectionable" by the Legislature].) It certainly does not advance the GCA's broader directives "to ensure that permissible gambling will not endanger public health, safety, or welfare, is free from criminal and corruptive elements, and [is] conducted honestly and competitively." (ISR at p. 6 [quoting Bus. & Prof. Code, § 19801, subd. (g)].)

Certainly, the Bureau should not approve any game with rules that are practically identical to the established rules of Nineteenth Century Twenty-One. But where the rules have more than slight differences, the Bureau's review of a game should focus on whether the rules designate one player as the bank or permit the cardroom to take a percentage of the wagers. The Bureau has already promulgated numerous regulations directed at these issues. And we have provided recommendations for potential improvements to those regulations in our comment regarding the Bureau's proposed rotation rule, submitted concurrently herewith.

To the extent the Bureau is determined to move forward with a regulation clarifying section 330's bar on "twenty-one," a more defensible regulation might look like the following:

Section 2073. Game of Twenty-One Prohibited.

(a) The game of twenty-one shall not be approved for play.

(b) As used in and for the purposes this Section, the game of twenty-one:

1. Is played with one or more standard decks with 52 cards composed of four suits of spades, hearts, diamonds, and clubs, with each suit containing 13 cards with one of each of the following: ace, 2, 3, 4, 5, 6, 7, 8, 9, 10, jack, queen, and king;
2. Numbered cards are assigned point values that correspond with their face value; jacks, queens, and kings are assigned a value of 10 points; and aces are assigned a value of one or 11 points at the discretion of the player in whose hand the ace is present; and,

3. Each player receives two cards. The first two cards to the players and dealer are dealt face down.
4. After receiving a first card, each player places their wager.
5. The dealer looks at his or her first card. If it has a 10-value card or ace, the dealer may declare all wagers doubled before he deals the second card to every player.
6. If the dealer's second card completes a natural 21, the dealer collects double the original player wagers.
7. If the dealer does not have a 21 in the first two cards, then each player may take additional cards.
8. The players do not see any of the dealer's cards.
9. There player has no option to take insurance or surrender.
10. The dealer or a player may split two cards of the same denomination (pairs).
11. Any player that has 21 collects double their wager if the dealer has declared the hand to be a double payout hand. This is true even if the player has hit their hand to reach 21.
12. If a player's point total exceeds 21, the player has "overdrawn" and must pay their wager to the dealer.
13. When it is the dealer's turn, they may take additional cards at their discretion.
14. The dealer has discretion whether to stand, hit or split.
15. If the dealer achieves a 21 with additional cards, they collect double the wager from any player who does not tie on 21 or has not yet overdrawn.
16. If the dealer overdraws, then the dealer pays the wagers of the other players and pays double to any player with a 21.
17. If the dealer achieves a twenty-one with any split, the dealer can collect double. If the dealer split results in two twenty-ones, the dealer collects 4 times the player wager from each player who lacks a twenty-one and who has not overdrawn.
18. For hands under 21, whoever is closer to 21, the dealer or the player, wins the opponent's wager.
19. The dealer wins all ties.

(c) Game rules that use one or two cards less than the number usually employed, or have other slight differences from the game rules in subpart (b) that are immaterial to the game's format, mathematics, odds, strategies, betting opportunities or sequence, do not distinguish the game from the prohibited game of twenty-one.

(*Reference:* Penal Code section 330, *People v. Gosset* (1892) 93 Cal. 641; *Tibbetts v. Van De Kamp* (1990) 222 Cal.App.3d 389, review den., 1990 Cal. Lexis 4733.)

VI. The Standardized Regulatory Impact Analysis Substantially Understates and Incorrectly Assesses the Effects of the Proposed Regulations

Under the APA, the Bureau must prepare a "standardized regulatory impact analysis" for any "major regulation" it proposes. (Gov. Code, § 11346.3, subd. (c)(1).) A regulation is "major," and thus requires a SRIA, if it is subject to review by Office of Administrative Law and will have an "economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars." (*Id.* § 11342.548.)

The requirement to prepare a SRIA is not a mere formality; it is an essential input to the regulatory process that ensures that the Bureau "avoid[s] the imposition of unnecessary or unreasonable regulations," bases any regulation on "adequate information," and "consider[s]" any proposal's "impact on business, with consideration of industries affected." (Gov. Code, § 11346.3, subd. (a)(1)-(2); see also Cal. Practice Guide: Administrative Law, *supra*, at ¶ 23:101 ["The purpose of the … SRIA requirement[] is to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions in the least burdensome manner."].)

To provide that input, a SRIA must address a range of important issues, including whether the proposal will eliminate jobs in the State, decrease investment in the State, and provide any benefits to the health, safety, and welfare of residents in the State. (Gov. Code, § 11346.3, subd. (c)(1).) It must also describe and explain the assumptions underlying the economic analysis, the categories of individuals and businesses affected by the proposal, the inputs and outputs of the assessment, and the agency's interpretation of the results. (See Cal. Code Regs., tit. 1, § 2002(b)(2).)

The Proposal at issue here easily qualifies as a "major regulation," as the Bureau has determined. The Bureau has thus provided a SRIA, prepared by Berkeley Economic Advising and Research (BEAR). But the BEAR Report accompanying the Proposal is deficient in several critical respects. We attach to, and incorporate into, these comments an analysis of the BEAR Report, prepared by Matthew Newman of the Blue Sky Consulting Group. (See The Blue Sky Consulting Group Report, "SRIA Regarding Proposed Cardroom Dealer Rotation and Blackjack Regulations" (Blue Sky Report), Ex. C.) Mr. Newman concludes that the BEAR Report "does not provide an accurate assessment of the potential adverse

economic impact on the state," "contains numerous methodological errors and omissions which have the effect of understating the likely impact of the proposed regulations," "fails to adequately provide the basis for the underlying assumptions relied upon," "does not account for the adverse impact on the competitive advantages of the state's cardroom industry," and "fails to address the impact on 'specific categories of individuals and businesses' as required." (Blue Sky Report at p. 1.)

For these reasons, the BEAR Report is a deficient analysis that fails to provide the information that the Bureau requires to assess whether its Proposal is necessary and reasonable. We incorporate the Blue Sky Report in these comments and ask the Bureau to address its criticisms of the BEAR Report. Below, we emphasize and expand upon critical points in Mr. Newman's analysis.

A. The SRIA Omits Impacts on Affected Industries

The BEAR Report provides an arbitrary and inconsistent analysis as between the Bureau's rotation proposal and its blackjack-style game proposal. As to the rotation proposal, the BEAR Report asserts that the proposed regulations would "eliminat[e] 50% of TPPPPS revenue" (SRIA at p. 20), but "does not assume any reduction in th[e] revenue stream" for cardrooms, despite its conclusion that "about half of players will leave cardrooms" (Blue Sky Report at p. 2 [quotation marks omitted]). By contrast, the BEAR Report "assumes that the Blackjack regulations would result in a 50% decline in cardroom revenue, but no decline in TPPPS revenue." (*Id.* at p. 2.) There are two significant problems with the BEAR Report's approach.

First, each of the assumptions is badly mistaken in its own right. "In fact, each proposed regulation would likely impact both cardroom and TPPPPS revenues." (Blue Sky Report at p. 3.) Contrary to the BEAR Report, the rotation proposal would have serious financial consequences for cardrooms. Even the BEAR Report anticipates that "about half of players [would] leave cardrooms" under the Proposal. (SRIA at p. 20.) Such a mass loss of cardroom patrons would plainly reduce cardroom revenue. Likewise, the reduced cardroom attendance owing to the Blackjack proposal would inevitably affect TPPPPS that depend on cardroom activity for their revenue. The BEAR Report badly errs by assuming that the effects of the Blackjack proposal could be limited to cardrooms alone. As a result of the BEAR Report's unreasoned omissions, "the BEAR report significantly understates the likely impact of the proposed regulations." (Blue Sky Report at p. 3.) Those errors are fundamental and fatal for this rulemaking. (See *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 114–115 ["We further conclude the Board was not permitted under the statutory scheme

to ignore evidence of impacts to specific segments of businesses already doing business in California when proceeding under the APA."].)

Second, the BEAR Report's differential treatment of the two proposals is illogical. As Mr. Newman explains, the BEAR Report "does not indicate why the proposed player-dealer regulations would only affect TPPP[P]S revenues and the Blackjack regulations only cardroom revenues." (Blue Sky Report at p. 3.) No plausible reason for that distinction exists, for the same reasons just explained. The arbitrary difference in the BEAR Report's analysis shows the report is unreliable and further reinforces that the underlying assumptions are in error.

B. The SRIA Vastly Underestimates the Economic Consequences of the Proposals

The BEAR Report fails to account for obvious consequences of the proposals beyond activity at the gaming tables themselves, resulting in a substantial underestimate of the proposals' economic consequences. The BEAR Report makes this error in at least two respects.

First, as Mr. Newman explains, while the BEAR Report makes assumptions regarding impacts on TPPPPS and cardroom revenues, the BEAR Report "does not estimate any reduction in revenue from other, related sources, such as food and beverage sales, retail activity, and hotel revenues." (Blue Sky Report at p. 3.) To be sure, the BEAR Report acknowledges that there will be likely impacts on "a variety of associated attractions or appurtenant services including restaurants, bar, and hotels" (SRIA at p. 17)—but it nevertheless fails to quantify them. "[T]his omission has the effect of understating the overall economic impact of the proposed regulations." (Blue Sky Report at p. 3.)

Second, the BEAR Report fails to examine the actual impacts *on businesses* from the proposals, even assuming that its prediction regarding *player* activity is correct. The BEAR Report finds that the proposals will cause "about half of players" to "leave cardrooms." (SRIA at p. 20.) The BEAR Report proceeds to make economic assessments based on that assumption, but its fails to appreciate the actual effects *on cardrooms* of a 50% reduction in cardroom patrons. Even assuming that a 50% reduction in cardroom patrons translates to a 50% reduction in cardroom revenue, that says nothing about the effects on the viability of the businesses. Because businesses depend on the ability to earn a profit from their activity, and many cardroom costs are fixed or would not drop by a similar level, the impact of a 50% decline in revenue would likely be catastrophic for many cardrooms. For example, a 50% loss of patrons would fail to sustain current cardroom leases, payments on loans, employment agreements, and many other costs

that are fixed or relatively inflexible. Cardrooms would cease to exist as we know them if they lost 50% of their patrons.

The result would be far more calamitous than the Bureau assumed. (See NPR at p. 8 ["The Department estimates the proposed regulations will result in 53 fewer jobs within the cardroom industry per year over the period of 2026-2035."]; *ibid.* ["The Department has determined that this regulatory proposal will likely not have a significant impact on existing businesses or the expansion of businesses in California."].) In reality, it is far closer to the "relatively extreme" scenario modeled in the BEAR Report, which finds that in the next ten years "cessation of cardroom gambling would reduce state GSP by over $1.3B and jobs by more than 1,000" per year. (SRIA at p. 42.) Job loss would almost certainly be even more substantial than the BEAR Report's most extreme estimate, considering the tens of thousands of living-wage jobs that cardrooms support. (See Part III.A, *supra*.) The BEAR Report's failure to consider the most basic principles of business operation renders its conclusions an unsound basis for the Bureau to consider the effects of its proposals.

C. The SRIA Fails to Provide Support for Key Assumptions

The BEAR Report does not include support for critical assumptions that underlie its analysis. "The BEAR SRIA report relies on several assumptions with respect to (a) the decline in revenues to TPPPS and cardrooms, (b) increases in revenues for other non-Blackjack games if Blackjack is eliminated, and (c) increases in revenues to tribal casinos. These assumptions comprise the foundation for the report's conclusions but are not supported by any data or analysis." (Blue Sky Report at p. 4; see also *id.* at p. 5 [quoting the BEAR Report's author as stating, "we have not been able to find any data or industry adjustments to gaming rule changes of the type being considered"].) For example, the BEAR Report does not provide support for its assumptions that "about half of players will leave cardrooms," or that "new games … and patron loyalty result in a 50% increase of other cardroom activities," or that "50% of cardroom TPPPPS patronage (by revenue) will be diverted to tribal casinos." (*Id.* at p. 4 [quoting SRIA at pp. 20-21].) These deficiencies persist despite the Department of Finance's comments on the original SRIA, which noted that "the SRIA must provide the rationale for any underlying assumptions that are material to the analysis." (*Id.* at p. 5 [quoting Letter from David Roland-Holst to Somjita Mitra dated November 19, 2024].) Absent further support for the basic assumptions underlying its economic analysis, the Bureau has "fail[ed] to make a reasoned effort to initially assess the economic impact" of the Proposal, as the APA requires. (*Western States Petroleum Assn.*, *supra*, 57 Cal.4th at p. 431 [deeming a regulation invalid where the agency's economic analysis was

based "an opaque calculation [of economic impacts] unsupported by any facts or other evidence explaining its validity as a reasonable estimate"].)

The BEAR Report also fails to support its assessment of the Proposal's fiscal impacts. The report states that the Proposal would result in "net increases in state and federal revenue," because of "shifting economic activity away from gaming toward more heavily taxed activities." (SRIA at p. 33.) This assertion is "not accompanied by any analysis or supporting data." (Blue Sky Report at p. 6.) Nor does it make logical sense. "[C]ardroom gaming is subject to the same taxes on income or profits that all other California businesses pay," and cardrooms also pay local gaming or business license taxes, property taxes, and sales taxes. (*Ibid.*) Tribal casinos, by contrast, "do not pay" the same set of taxes. (*Ibid.*) "As a result, the conclusion that tax revenue would increase as a result of the regulations (which are anticipated to reduce overall state economic activity) is not supported by the data or analysis presented in the report." (*Ibid.*)

The Bureau compounds that error by failing to take account of the likely impact on local communities. "[M]any local jurisdictions in California rely to a significant extent on revenue from cardrooms. Reducing this revenue stream could have a potentially significant adverse impact on the budgets of these communities." (Blue Sky Report at p. 6.) The Department of Finance emphasized the importance of providing "quantitative estimates of any revenue changes at the local level," but the revised SRIA "still fails to account for the disparate impacts on individual local communities throughout the state." (*Ibid.* [quotation marks omitted].) The SRIA also fails to reconcile its estimate of $109 million in lost state and local taxes with its overall, positive assessment of the proposals' fiscal impacts. (See *ibid.*)

D. The SRIA Does Not Assess the Competitive Effects of the Proposal

Finally, despite the legal requirement that a SRIA assess the competitive advantages or disadvantages of a proposal (see Gov. Code, § 11346.3), the BEAR Report fails to do so. It "does not identify the extent to which the proposed regulations would impact the competitiveness of the cardroom industry or the extent to which patrons would shift their gaming activity to other states or to unregulated (illegal) gaming venues." (Blue Sky Report at p. 5.) As discussed above, this failure to follow the legal requirements for preparation of a SRIA compromises the ability of the Bureau or the public to understand numerous important implications of the Proposal, ranging from fiscal impacts (see Part VI.B, *supra*) to added burdens on local law enforcement due to diversion of gaming activity away from well-regulated cardrooms to illegal operations (see Part III, *supra*).

VII. CONCLUSION

The Bureau has for many years approved blackjack-style games for play in licensed cardrooms because those games are legal under California law. Nothing in the Proposal offers any reason to conclude otherwise. To the contrary, the Proposal plainly conflicts with settled judicial precedent and the Bureau's own interpretation of section 330, dating back 120 years. The Bureau should not proceed with its adoption.

Very truly yours,

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Jeremy Kreisberg
Oliver L. Brown
Munger, Tolles & Olson LLP
Counsel for the California Gaming Association

Clarke Rosa
President, Communities for California Cardrooms

Keith Sharp
President, California Cardroom Alliance

The following entities also join in the CGA's opposition to the Proposal:

Artichoke Joe's Casino

Bay 101

Blackstone Gaming

California Grand Casino

Capitol Casino

Casino Club

Casino M8trix

Club One Casino

Crystal Casino

Elevation Entertainment
- Seven Mile Casino
- The Saloon at Stones Gambling Hall
- The Tavern at Stones Gambling Hall

Hollywood Park Casino

Hustler Casino

Kings Card Club

Knighted Ventures

Larry Flynt's Lucky Lady Casino

Lucky Chances Casino

Napa Valley Casino

Oaks Card Club

Ocean's Eleven Casino

Outlaws Card Parlour

Palace Poker Casino

Parkwest Casinos
- Parkwest Bicycle Casino
- Parkwest Casino Cordova
- Parkwest Casino Lodi
- Parkwest Casino Lotus
- Parkwest Casino Manteca
- Parkwest Casino 580

Player's Casino

Players Edge

Seven Mile Casino

Stars Casino

The Aviator Casino

The Commerce Casino & Hotel

Westlane Card Room

Hawaiian Gardens

Exhibit A

Twenty-One:
The Evolution of a Game

David G. Schwartz, Ph.D.

Prepared for the California Gaming Association

February 2025

1. Qualifications

My name is David G. Schwartz. I earned a Ph.D. in United States History from the University of California, Los Angeles in 2000. My dissertation focused on the historical development of the institution of the casino resort on what is now known as the Las Vegas Strip in the years 1945 to 1978. Since then, I have written or edited 12 books, mostly on various gambling history topics. In *Roll the Bones: The History of Gambling* (original edition, 2006; Casino edition, 2013), I presented a broad survey of the history of gambling as traced from the earliest archeological and historical records to the present day, encompassing the development of games, the careers of famous gamblers, and the evolution of gambling businesses in destinations such as Venice, Monte Carlo, Macau, and Las Vegas. I researched this book by consulting previous works of gambling history and examining primary source documents. While the book is a survey summarizing developments in gaming history rather than an academic monograph written in support of a thesis, one of the major themes that emerged from my research was the continuing evolution of gambling and games.

One of the things that I have examined is the way that rules of games have changed, creating fundamentally new games that may have the same name as the old ones, but are truly distinct games. Two examples that I discussed in *Roll the Bones* were the games of craps and poker, both of which were "invented" in America out of earlier European predecessors before changing dramatically over the ensuing decades.

I have taught courses on the history of gambling and casinos, and have conducted research into several aspects of gambling history, including the dawn of remote gambling and the federal legislation that it sparked, a biography of the founder of Caesars Palace and Circus Circus, a narrative about the history of the most storied "classic Vegas" casino, the Sands, and smaller articles on subjects ranging from the rise and fall of junkets in Las Vegas to the spread of tournament poker.

A copy of my curriculum vitae is attached as an exhibit.

2. Explanation of Project

It is well established that a game known as twenty-one or vingt-un was first played at least 200 years ago. I have been retained to examine how the rules of twenty-one changed from the early 19th century to the late 20th century.

The rules of the game as recorded in various gambling rulebooks provide a snapshot of how the game was played at the time of the rules' publication.

Rulebooks have historically played an important role in communicating the consensus view of what constitutes a game. By necessity, games have rules. In examining Johann Huizinga's concept of a game as a "magic circle" separated from the outside world, Egenfeldt-Nielsen, Smith, and Parjares Tosco note that an essential part of a game is "rules that are clearly distinct from those we follow outside this special activity."[1]

For gambling games, a defined ruleset is of particular importance, since money is on the line. As such, published rulebooks have a long history. The first English translations of French rulebooks date to 1651, with Charles Cotton's 1674 *The Compleat Gamester* as one early native English contribution to the genre. Edmund Hoyle's 1742 publication of a whist instructional did much to popularize that game, and he then issued books detailing the rules of other games. After his 1769 death, publishers continued to publish rulebooks under his name, and "Hoyle's" became synonymous with instructive gambling books.[2]

Thus, "Hoyle's" rules effectively became the last word in codifying the rules of gambling games. By examining a selection of *Hoyle's* editions across a time period, one can see how the ways games were played shifted and how games came in (and out) of common usage.

In the late 20th century, other rulebooks, including those released by playing card companies or authored by experts like John Scarne, became known as authoritative, continuing the long legacy of Hoyle.

With these historical precedents in mind, I was asked to explore whether a similar evolution took place for the game of twenty-one, also known as vingt-un, and how the historical game of twenty-one relates to the current game of blackjack.

3. A New Game or a Variation?

In some respects, gambling can be conservative; Americans still play with cards depicting kings and queens even though no monarch has been accepted as sovereign in lands controlled by the United States since 1776. In others, however, gambling evolves rapidly. Witness how quickly gambling entrepreneurs seized on the Internet as a betting medium, or the development of slot machines as immersive video games. Interestingly, sometimes games evolve in a way paralleling the ship of Theseus, with rules being changed one-by-one until little of the original game is recognizable.

Craps, for example, evolved from the medieval dice game of hazard, which pitted a caster against a setter. Some London gambling houses chose to bank the game themselves using a variation called French Hazard. French settlers brought craps to New Orleans in the late 18th century, and by 1840 Americans had streamlined the game, which now featured a "shooter," against a "fader," but remained a social game that had a simple ruleset and did not require a specialized layout. An initial attempt to professionalize the game, "take-off craps," required shooters to pay a set fee to the house after two consecutive winning passes, did not catch on, but the later innovation of "bank craps," played against the house on a layout with pass, don't pass, come, don't come, proposition, and field bets (each with a built-in house advantage) became popular in the 20th century and eventually became known simply as "craps," supplanting the rules of the original game.[3]

Similarly, the most common variation of poker first played in the United States featured a twenty-card deck (A-K-Q-J-10 of all suits), with four players being dealt five cards each, with the winning combinations one pair, two pair, triplets, a full house (a triplet with a pair), and four of a kind. There were no straights or flushes, no discarding or drawing of cards, and only one round of betting. Before 1850, Americans began using the full deck and allowing straights and flushes; after that date, the draw, in which players could discard cards from their own hand and draw new ones, appeared, as did innovations such as jackpots and community cards.[4] The game as played in 1950, with multiple betting rounds, drawing, bluffing, and possibly community cards, was distinct from its early iterations.

How can we say that two games are different, or one is merely a variation of each other?

Two general principles answer that question: If a player can adapt to a game with minimal instruction and if the new game involves no fundamental shifts in player strategy, we can safely say that the game is a variant of an existing one. If, however, a player familiar with the old ruleset would be bewildered by the new game, or game strategies change significantly for any participant, we are looking at two sets of game rules with significant differences.

Gambling history has examples of games remaining the same while taking on different names, and games identified with the same name being fundamentally different—the game of poker is one salient example.

Poker has evolved to include several subsets of games, including straight poker, where all cards are dealt face-down with no draw of cards; draw poker, where cards can be discarded and new cards drawn to form a hand; stud poker, where some cards are dealt face-down and some face-up; and community poker, where players combine shared cards with individual cards to make a complete hand. These games have different strategies and manner of play but are all referred to as “poker” games.

There are also games that include the word “poker” in their names, like Three Card Poker and Pai Gow Poker, which use poker hand rankings but have an entirely different betting format and strategy. These games are more similar to modern blackjack, in that each player bets against the dealer, rather than other players.

4. Historical Twenty-One vs. Modern Blackjack

Looking at 19 rulesets dating from 1825 to today, one can see a major dividing line in the mid-20th century.

Historical Twenty-One

In general, rules for "Historical Twenty-One" dating from 1825 to 1932 have the following commonalities:

Object: for the player to get to 21 or as close as possible without passing it.

Cards: The game uses a standard 52-card deck, with cards 2-9 counting as their face value, aces counting as one or eleven, at the player's option, and tens and face cards (jack, queen, king) counting as ten.

Naturals and Double Payouts: Drawing an ace and a ten-value card on the initial draw was known as a "natural" twenty-one.

In almost every version from these years, players with a natural collect double their wager from the dealer, and dealers with a natural collect double from each player without their own natural.

In most versions through 1875, players with a double also collect double stakes from all players who do not have a double.

Card Visibility: All initial cards are dealt face-down, and all hit cards are dealt face-up.

Who Deals: The deal passes among players, with the first dealer chosen by a random card draw or another mutually agreed-upon method. In addition, a natural twenty-one entitles the possessor to deal regardless of their place in the rotation; in later versions, the deal can also be "sold."[1]

Betting sequence: In early games, players bet before the first card is dealt. However, after 1875, the majority of rulesets specify that players bet or can increase their bet after seeing their first card.

Player Decisions: Player decides to stand or hit. Player cannot place insurance bets.

Dealer Decisions: Dealer can make decisions about how to play their hand. The dealer, for example, can decide whether to stand, split, or hit, and there are no house rules on how the dealer plays their hand.

In some variations, the dealer can look at their first card and then force other players to double their bet.

[1] These versions of the game were sometimes referred to as "family" or "social" games.

Bust: If the player draws to over 21, he loses immediately. If the dealer draws to over 21, he pays all those who have not already busted.

Hitting to 21 Can Pay Double: There were some variations in which if the dealer hits to exactly 21 he receives double from each player, though a player with 21 pushes, and if a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.

The major elements of Historical Twenty-One are the card rankings, a "natural" twenty-one entitling players to collect double from the dealer and vice versa, a rotating deal, both players and dealers having complete discretion when choosing whether to stand or hit, "busting" when exceeding 21, and a tendency for drawing to exactly 21 entitling the player or dealer to a bonus. It has more similarities to the modern game of Pontoon, which developed as a British variant of twenty-one in the late 19th century, than Modern Blackjack. In Pontoon, the dealer's cards remain hidden, the dealer plays with discretion, and a natural twenty-one pays double.[5]

Modern Blackjack

The word "blackjack" itself, in reference to a game with a 21-point count, did not come into use until around the time of the rule divergence. The 1932 edition of Hoyle is the earliest rule edition that I reviewed that uses the word "blackjack" to refer to a game related to Twenty-One. When the State of Nevada legalized wide-open commercial gaming in 1931, the statute listed twenty-one and blackjack separately.

The rules of Modern Blackjack are:

Object: for the player to get to 21 or as close as possible without passing it.

Cards: The game uses one or several 52-card decks, with cards 2-9 counting as their face value, aces counting as one or eleven, at the player's option, and tens and face cards (jack, queen, king) counting as ten.

Natural: Drawing an ace and a ten-value card on the initial draw was known as a "natural" twenty-one.

In general, a player with a natural will be paid 3:2 (or, more recently, 6:5) by the dealer, while a dealer with a natural only collects table stakes from all players without a natural.

Card Visibility: In Modern Blackjack, one dealer card is exposed before players make their decision to stand, hit, split, double down, or buy insurance.

Who Deals: In casino blackjack, a casino employee deals on behalf of the house. In variants of blackjack featuring a rotating player dealer position ("California style"), the opportunity to take the deal is offered to each player on a systematic basis.

Betting sequence: Players bet before the first card is dealt.

Player Decisions: Players decide to stand, hit, double-down, split, surrender, and get insurance.

Dealer Decisions: Dealer follows fixed house rules (in general, hit on 16 or lower, stand on 17 or higher), with no discretion. The dealer is not entitled to split or double down.

Bust: If the player draws to over 21, he loses immediately. If the dealer draws to over 21, he pays all those who have not already busted.

Hitting to 21: There is no extra bonus for either the dealer or player drawing exactly to 21.

The rules for the "permanent bank" published by the U.S. Playing Card Company in 1950 and Scarne's rules for casino blackjack, published in 1973, are virtually identical to the rules used in casinos today. A player from 1950, sitting down at a blackjack table in any American casino, could play with no additional explanations needed, although they might be dismayed by 6:5 blackjack and could be initially confused about multi-deck shoes and automated shufflers.

The same, however, could not be said for a twenty-one player of 1850, or even 1930, sitting down to a Modern Blackjack table. The next section analyzes what exactly makes these games different.

5. Analysis: What Makes These Games Different?

We can zero in on three key differences between Historical Twenty-One and Modern Blackjack:

1. **Dealer decisions**: In Historical Twenty-One, the dealer can hit, split, or stand as they please, or even demand double stakes from players. In Modern Blackjack, the dealer must follow the house rules, with no personal discretion. The dealer can never force players to double their wager.
2. **Consequences of a natural**: In Historical Twenty-One, a natural could entitle a player to double stakes from all players and the dealer, or entitle the dealer to take double stakes from all players. In Modern Blackjack, a natural can only win a player 3:2 or 6:5 from the dealer, and merely wins the dealer's hand, with no additional money collected. A dealer with a natural cannot collect double from players.
3. **Hitting to 21**: In Historical Twenty-One, this entitles players/the dealer to a bonus, while in Modern Blackjack, it does not.

These differences make it impossible for someone used to Historical Twenty-One both to play Modern Blackjack without major instruction and render strategies used to play the games different. For example, Historical Twenty-One's rule that dealers can demand double stakes from players may limit bet sizes, while the dealer being allowed to hit on 17 or split pairs at their discretion may encourage players to hit more aggressively. Players receiving a double payout for hitting to 21 may also encourage them to hit more aggressively. The fact that a player would have to pay double if another player is dealt a natural may also affect the size of the initial wager.

Modern Blackjack is different from Historical Twenty-One because, due to the dealer having to act according to a fixed set of rules, it is possible for players to do better in the game by employing a fixed and basic strategy. Basic strategy in blackjack is a series of rules that instruct the player when to hit, stand, double down, split, or get insurance. The first mathematically correct blackjack strategy was published in an article in the *Journal of the American Statistical Association* in 1956. In his *Encyclopedia*, John Scarne devoted more than two pages to explaining his own blackjack strategy. Notably, he did not have any strategy for the "private" game where the dealer had discretion on how to play their hand, as in Historical Twenty-One.

Basic strategy can yield, depending on the casino rules, a disadvantage of 0.5 percent or an advantage of 0.1 percent. Basic strategy coupled with counting cards can deliver an advantage of as much as three percent (an unheard of player advantage among casino games). As Edward Thorp, whose 1962 book *Beat the Dealer* popularized the concept of skill play (card-counting) wrote: "Blackjack is the only casino gambling game today where you [the player] can consistently have the edge."[6] This advantage is only possible in a game where the dealer lacks discretion and plays according to fixed rules, which is an element of Modern Blackjack but not Historical Twenty-One. The advent of skill play led to an explosion

in the popularity of blackjack in American casinos, as it displaced craps and roulette as the top table game. Notably, nothing about the game itself changed—there were no new side bets or bonuses added to it. It was only the chance for players to consistently level the odds that propelled blackjack's rise.[7]

Today, Blackjack strategy is best encapsulated in a simple card, roughly the size of a credit card, that can be easily understood:

Figure 1: A Basic Strategy Card

	DEALER UPCARD									
Hard total	2	3	4	5	6	7	8	9	10	A
5-7	H	H	H	H	H	H	H	H	H	H
8	H	H	H	H	H	H	H	H	H	H
9	H	D	D	D	D	H	H	H	H	H
10	D	D	D	D	D	D	D	D	H	H
11	D	D	D	D	D	D	D	D	D	D
12	H	H	S	S	S	H	H	H	H	H
13	S	S	S	S	S	H	H	H	H	H
14	S	S	S	S	S	H	H	H	H	H
15	S	S	S	S	S	H	H	H	R	R
16	S	S	S	S	S	H	H	R	R	R
17	S	S	S	S	S	S	S	S	S	RS
Soft total	2	3	4	5	6	7	8	9	10	A
A, 2	H	H	H	D	D	H	H	H	H	H
A, 3	H	H	H	D	D	H	H	H	H	H
A, 4	H	H	D	D	D	H	H	H	H	H
A, 5	H	H	D	D	D	H	H	H	H	H
A, 6	H	D	D	D	D	H	H	H	H	H
A, 7	DS	DS	DS	DS	DS	S	S	H	H	H
A, 8	S	S	S	S	DS	S	S	S	S	S
A, 9	S	S	S	S	S	S	S	S	S	S

(casinoinsider.com)

This strategy would be unworkable on Historical Twenty-One, as it would be impossible to account for a dealer's caprice in choosing whether to play aggressively or passively, let alone whether the dealer could demand double stakes. By the same token, the dealer could not employ this strategy when facing players in Historical Twenty-One, since the dealer's choices would depend on how players chose to play their hands.

Card-counting itself, the innovation popularized by Thorp and grudgingly acknowledged by Scarne (who claimed that, because of casino countermeasures, it had become a "lost gimmick" by 1963),[8] relies on the fixed and predictable rules that govern the dealer, and the player benefit of naturals, to work. If the dealer could choose when to hit and could collect double or even quadruple from players when she hits a natural twenty-one, the basic premise of card-counting—that more aces and tens in the deck asymmetrically benefits players because dealers are more likely to bust and naturals are more likely—would be obliterated.

While the other two major distinctions, in sum, do much to make Modern Blackjack a game with strategies different from those of Historical Twenty-One, it is the element of dealer choice that completely upends the old game. Taking choice away from dealers, more than any other alteration, transformed Historical Twenty-One into Modern Blackjack by shifting the entire nature of the game. Modern Blackjack, by removing dealer discretion, allowed for the development of a strategy predicated on fixed and predictable rules hinging on a single unknown: which card would come out of the deck next.

6. Conclusion

Examining the evolution of rulesets over nearly two hundred years, one sees some fluctuation in the rules of twenty-one/vingt-un in virtually every decade, with several small changes over the 19th century.

In the 20th century, however, modifications to the rules made the game of Modern Blackjack a very different game from Historical Twenty-One. Players can no longer win stakes from other players, or lose double stakes to them. More importantly, the dealer loses all discretion, paving the way for the development of blackjack as a skill game with optimal strategies, based on the premise that the deck of cards has a "memory" (cards already played cannot be played again, raising or lowering the possibilities of naturals or dealers busting) and, with the dealer following fixed rules, the player having the ability to exploit advantages under certain conditions. It is inconceivable that any modern Las Vegas casino would offer Historical Twenty-One because casino dealers in card games do not make decisions about how to play the dealer hand. They always follow fixed rules, which ensures consistent house odds and theoretical win percentages. It also prevents players from feeling that they are losing because of the dealer's skill rather than pure chance.

For someone used to Historical Twenty-One, Modern Blackjack could not be played without new instruction and players would employ different strategies. A player of the 19th-century game, in which the dealer can choose to hit or stand, or even "challenge the board" after receiving his cards, would not be able to use card-counting or other modern advantage techniques, since the gameplay was fundamentally different.

For that reason, the game as described by the U.S. Playing Card Company in 1950 and Scarne in 1973, which is essentially the game played in most casinos and card rooms today, is, in my view, a different game from the one described in rulebooks before 1930, and certainly before 1900.

Notes

[1] Egenfeldt-Nielsen et al., Understanding Video Games: The Essential Introduction (Routledge 2019) p. 33-4.
[2] Schwartz, Roll the Bones: The History of Gambling, Casino Edition (Winchester Books 2013) p. 107-8.
[3] Schwartz, *supra*, p. 131-2.
[4] Schwartz, *supra*, p. 130-1.
[5] Phillips, The Complete Book of Card Games (Parragon 1953) p. 270-2.
[6] Thorp, Beat the Dealer: A Winning Strategy for the Game of Twenty-One (Vintage Books 1962) p. 4.
[7] Schwartz, *Blackjack's Rise and Fall Shows What Drives Customers Away* (July 16, 2018) Forbes.com <https://www.forbes.com/sites/davidschwartz/2018/07/16/blackjacks-rise-and-fall-shows-what-drives-customers-away/>
[8] Scarne, Encyclopedia of Games (Harper & Row 1973) p. 285.

Attachment A

GAME RULES	**1825: Hoyle's Games Improved (NY G. Long)**
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal.
TIMING OF BETTING	
DEALING OF CARDS	• Two card are dealt to each player. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	
NATURAL TWENTY-ONE **(in the first two cards)**	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer and all the other players without a Natural. • 'Eldest' natural serves as tiebreaking factor, entitling the possessor to the winnings and to the deal.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	Players can split.
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.
VARIATIONS	

GAME RULES	**1864: American Hoyle (NY Dick & Fitzgerald)**
NAME	Vingt-Un
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal. • Players can sell or transfer the deal to another player.
TIMING OF BETTING	Bets are made before the first card is dealt.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	
NATURAL TWENTY-ONE **(in the first two cards)**	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays 1-1.
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	• In a minority of games, the player collects double from all players and triple from the dealer. • In some games, the dealer hand is dealt face up. • Winner-take-all Pool: In some games, those whose cards are under 21 pay one stake into the pool, those who overdraw pay two, and those who hit to 21 pay zero. The pool accumulates until someone draws a natural and wins the pool.

GAME RULES	1864: Hoyle's Games (Phila. Lippincott & Co.) "First Way"
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10, Face Cards count 10, and Jack counts as 11. • An Ace or Jack + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • Other mechanics of the deal are not specified.
TIMING OF BETTING	Bets are made before the first card is dealt.
DEALING OF CARDS	• Two card are dealt to each player. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	
NATURAL TWENTY-ONE (in the first two cards)	Players with a Natural collect stakes from all other players.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	
DOUBLING DOWN	
INSURANCE BET	
TIES	The player with the first dealt hand ("elder") wins.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	
VARIATIONS	

GAME RULES	**1864: Hoyle's Games (Phila. Lippincott & Co.) "Second Way"**
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal.
TIMING OF BETTING	
DEALING OF CARDS	• Two card are dealt to each player. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	
NATURAL TWENTY-ONE **(in the first two cards)**	Players with a Natural collect double from all other players without a Natural.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21, the dealer and players without 21 pays double stakes.
VARIATIONS	• Winner-take-all Pool: In some games, those whose cards are under 21 pay one stake into the pool, those who overdraw pay two, and those who hit to 21 pay zero. The pool accumulates until someone draws a natural and wins the pool.

GAME RULES	1872: Hoyle's Games (Phila. Lippincott & Co.)
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal.
TIMING OF BETTING	
DEALING OF CARDS	• Two card are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer and all the other players without a Natural.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.
VARIATIONS	

GAME RULES	1875: Hoyle's Games (Boston: DeWolfe, Fiske & Co.) (Frere)
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Limited to a dozen counters or chips.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table when a player has a Natural 21. • The deal may be sold or passed.
TIMING OF BETTING	Bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural. If the dealer declared double stakes after dealing the first card, the dealer receives quadruple. • Players with a Natural collect double from the dealer. • Nearly obsolete rule entitles the possessor of a natural to double from other players. • The occurrence of a Brulet clears the board of the stakes laid or takes a predetermined amount from the players.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays double. • If the dealer declared double after the first card, it pays quadruple.
DOUBLING DOWN	
INSURANCE BET	
TIES	Dealer wins ties.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.
VARIATIONS	The rule allowing a player to collect double from all the other players on a Natural is described as "nearly obsolete."

GAME RULES	**1880: Modern Pocket Hoyle (NY Dick & Fitzgerald)**
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck(s)
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal. • The deal may be sold or passed.
TIMING OF BETTING	Bets are made before the first card is dealt.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	*Rule variation* : After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE **(in the first two cards)**	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays 1-1.
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push (or go to the dealer in certain variations)
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	English Version: • Players wager after their first card. so they win double even if the Dealer has a Natural. • Ties go to the dealer in the English game. • The dealer also has the privilege of seeing their first card and can declare double stakes from all players. Other Variation: • If the top and bottom cards (Brulet) form a Natural, then the dealer wins double. • If a player has a Natural, the dealer wins only single stakes. • In some games, a player Natural wins double from all players and triple from the dealer. • In some games, all player stakes go into a pool until there is a Natural. • In some games, the dealer hand is dealt face up.

GAME RULES	**1885: The American Hoyle (NY: Dick & Fitzgerald (Foster))**
NAME	Vingt-Un
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck(s)
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal, unless players have agreed to rotate after a # of hands or packs. • The deal may be sold or passed.
TIMING OF BETTING	Bets are made before the first card is dealt.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	*Rule variation*: After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays 1-1.
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push (or go to the dealer in certain variations)
SETTLING WAGERS, HAND RANKINGS	• The hand closest to 21, dealer or player, wins the player wager. • Players claiming to have bested the dealer must show their cards. Those who overdraw or lose to the dealer do not have to show their cards.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	English Version: • Players look at the first card before betting and the dealer may declare double wagers after seeing his first card. • Ties pay to the dealer, except Naturals. • A player or dealer can hit to a 21 and double payout.

GAME RULES	**1887: The Standard Hoyle (NY Excelsior Pub. House)**
NAME	Vingt-Un
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal. • The deal may be sold or passed.
TIMING OF BETTING	Bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	• After the dealer sees his first card, he can force players to double their bets or forfeit their bets. • After seeing both cards, the dealer may challenge the board and settle all wagers without any hitting or further play.
NATURAL TWENTY-ONE **(in the first two cards)**	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer. • If the top and bottom cards (Brulet) form a Natural, then the dealer wins double.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays 1-1.
DOUBLING DOWN	
INSURANCE BET	
TIES	Dealer wins ties except if a player declare a Natural before the dealer receives his second card.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	
VARIATIONS	• In some variations, a player Natural wins double from all players and triple from the dealer. • In some variations, ties push.

GAME RULES	1890: Hoyle's Games America's Complete Handbook (Phila. Crawford & Co.)
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Usually limited to a dozen.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table when a player has a Natural 21. • The deal may be sold or passed.
TIMING OF BETTING	Bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural. If the dealer declared double stakes after dealing the first card, the dealer receives quadruple. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays double. • If the dealer declared double after the first card, it pays quadruple.
DOUBLING DOWN	
INSURANCE BET	
TIES	Dealer wins ties.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.
VARIATIONS	• The rule allowing a player to collect double from all the other Players on a Natural is now nearly obsolete. • In some cases, Brulet rules are used. • Old mode of playing makes the holder of the Natural become dealer.

GAME RULES	**1907: Hoyle's Games (NY McClure Co)**
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table when a player has a Natural 21, unless players have agreed to rotate after a # of hands or packs.
TIMING OF BETTING	• Bets are made before the first card is dealt. • Players can increase their wagers after the first card is dealt.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE **(in the first two cards)**	• If the dealer has a Natural, he collects double from each player unless the player has a Natural. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	Players can split.
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	• This book includes a game called "Black-Jack" that is completely different than the modern game. • Macao and Quinze as variations of Vingt-un. • In some cases, the deal goes to holder of Natural 21.

GAME RULES	**1909: Hoyle's Games Modernized (London: Routledge & Sons, NY: E.P. Dutton & Co.)**
NAME	Vingt-Un
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table when a player has a Natural 21, unless players have agreed to rotate after a # of hands or packs.
TIMING OF BETTING	Bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural. If the dealer declared double stakes after dealing the first card, the dealer receives quadruple. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players can split. • A player must finishing drawing on one hand before moving to the other.
DOUBLING DOWN	
INSURANCE BET	
TIES	Dealer wins ties.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.
VARIATIONS	• If the top and bottom cards (Brulet) form a Natural, then the dealer wins double. • If a player has a Natural, the dealer wins only single stakes. • Instead of rotating, deal can go to holder of natural, but argues this is not a good practice • Describes a French version of the game.

GAME RULES	1929: The New Hoyle Ed. Seymour (Chicago/NY Laidlaw Bros) (Almost the same as 1890 and 1875, near copy)
NAME	Vingt-Un (or Twenty-One)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	• Agreed upon betting limits. • Played with 10-12 counters.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table every hand, unless players have agreed to rotate when a player has a Natural 21.
TIMING OF BETTING	• Bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural. If the dealer declared double stakes after dealing the first card, the dealer receives quadruple. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players and dealers can split. • A Natural on a split pays double. • If the dealer declared double after the first card, it pays quadruple.
DOUBLING DOWN	
INSURANCE BET	
TIES	Dealer wins ties.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives double from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player double stakes.
VARIATIONS	• The rule allowing a player to collect double from all the other players on a Natural is now nearly obsolete. • In some cases, Brulet rules are used. • Less commonly, the deal goes to holder of a Natural.

GAME RULES	**1932: US Playing Card Co. Publishers' 32nd Edition**
NAME	Blackjack or Vingt-et-un (first instance of calling the game Blackjack)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table every hand, unless players have agreed to rotate when a player has a Natural 21 or after a certain # hands.
TIMING OF BETTING	• Bets are made before the first card is dealt. • Alternatively, bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player face down. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	
NATURAL TWENTY-ONE **(in the first two cards)**	• If the dealer has a Natural, he collects double from each player without a Natural. • Players with a Natural collect double from the dealer.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players can split. • A Natural on a split pays double. • A player must finishing drawing on one hand before moving to the other
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	
VARIATIONS	• In some games, a player with a natural takes all the player wagers. • Macao is a variation to Vingt-un.

GAME RULES	**1950: US Playing Card Co. Publishers' 47th Edition (Social Game)**
NAME	Blackjack (Twenty-one or Vingt-et-un)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • A Natural Vingt-un entitles the possessor to deal. • The deal may be sold or passed.
TIMING OF BETTING	Bets are made after each player sees their first card.
DEALING OF CARDS	• Two cards are dealt to each player, one face down and the other face up. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	After the dealer sees his first card, he can force players to double their bets or forfeit their bets.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects double from each player without a Natural and single stakes from players with a Natural. • Players with a Natural collect double from the dealer, unless the dealer has a Natural.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	Players can split.
DOUBLING DOWN	
INSURANCE BET	
TIES	Dealer wins ties.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	• A player wins if they have five cards or more and stand at 21 or less, or they have 6-7-8. The player wins double or more depending on the number of cards. • Describes burnt cards and list penalty/irregularity procedures.

GAME RULES	**1950: US Playing Card Co. Publishers' 47th Edition (Casino-Banked Game)**
NAME	Blackjack (Twenty-one or Vingt-et-un)
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck(s)
COUNTERS OR CHIPS	Agreed upon betting limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	House holds the dealer position and banks the game.
TIMING OF BETTING	Bets are made before the first card is dealt.
DEALING OF CARDS	• Two cards are dealt to each player face up. • The dealer receives one card face down and one face up. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	If the dealer has a 10 or ace showing, they check their face down card to see if there is a Natural.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects stakes from all players without a Natural. • Players with a Natural collect 3-2 from the dealer, unless the dealer has a Natural.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	• Dealer must stand on 17, hit on 16 or less. • An ace counts as 11 when determining whether the dealer hits.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players can split. • The dealer cannot split.
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	

GAME RULES	1973: Scarne's Encyclopedia of Games (Harper & Row) (Social Game)
NAME	Blackjack or Twenty-One (or "B.J.")
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck
COUNTERS OR CHIPS	Dealer sets betting limit.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	• Players take turns. • First deal determined by random deal of cards or by an agreed way. • Deal rotates around the table every hand, unless players have agreed to rotate when a player has a Natural 21 or after a certain # hands. • The deal may be sold or passed.
TIMING OF BETTING	• Bets are made before the first card is dealt. • Players can bet on another player's hand.
DEALING OF CARDS	• Two cards are dealt to each player face down. • The dealer receives one card face down and one face up. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	If the dealer has a 10 or ace showing, they check their face down card to see if there is a Natural.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects stakes from each player without a Natural. • Players with a Natural collect double from the dealer, unless the dealer has a Natural.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	The dealer can choose when to stand or hit.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	
DOUBLING DOWN	
INSURANCE BET	
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	• Joker used as a locater in the deck/ alternative to a burnt card. • Two dealing variations are mentioned: (1) Holder of natural becomes dealer. (2) Dealer deals 5 hands and then rotates clockwise.

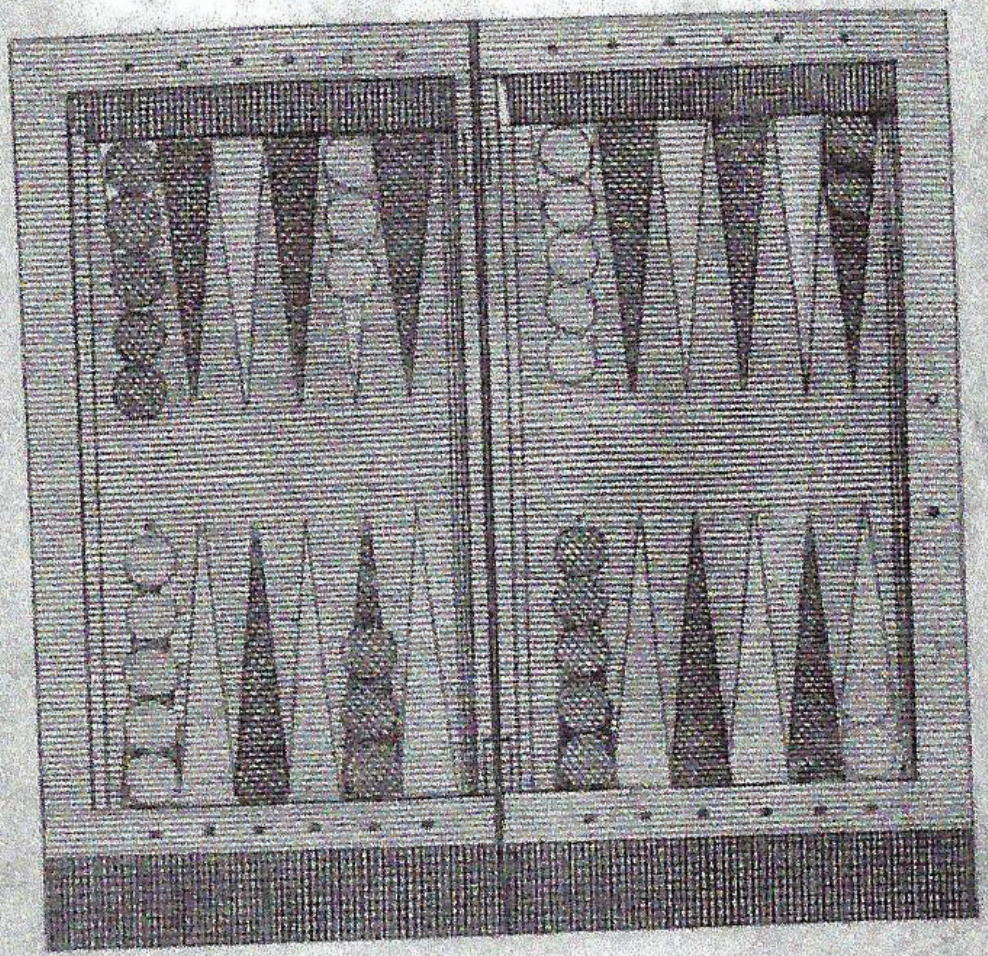
GAME RULES	1973: Scarne's Encyclopedia of Games (Harper & Row) (Casino-Banked Game)
NAME	Blackjack or Twenty-One (or "B.J.")
OBJECT OF THE GAME	To get 21, or nearest possible without passing it.
DECK(S)	Standard deck(s) (4)
COUNTERS OR CHIPS	Casino sets wagering limits.
CARD VALUES	• Cards 2-9 count their number/pips. • Ace is 1 or 11 at player's option. • 10 and Face Cards count 10. • An Ace + 10 is a Natural 21.
DETERMINATION OF THE DEAL	House holds the dealer position and banks the game.
TIMING OF BETTING	Bets are made before the first card is dealt.
DEALING OF CARDS	• Two cards are dealt to each player, one face up and one face down. • The dealer receives one card face down and one face up. • Hit cards are dealt face up.
BETTING RULES / OPTIONS	If the dealer has a 10 or ace showing, they check their face down card to see if there is a Natural.
NATURAL TWENTY-ONE (in the first two cards)	• If the dealer has a Natural, he collects stakes from all players without a Natural. • Players with a Natural collect 3-2 from the dealer, unless the dealer has a Natural.
PLAYER DECISIONS / OPTIONS	Each player can stand or hit.
DEALER DECISIONS / OPTIONS	• Dealer must stand on 17, hit on 16 or less. • An ace counts as 11 when determining whether the dealer hits.
BUSTING	• If the player hits to over 21, then he loses immediately. • If the dealer hits to over 21, he pays all those that have not busted.
SPLITTING	• Players can split. • The dealer cannot split.
DOUBLING DOWN	Players can double down, meaning they can double their wager in exchange for one additional face-down card.
INSURANCE BET	• When dealer has an ace up, the player can put up 1/2 their wager. • If dealer has a Natural, the player receives 2-1 but loses their base wager (break even).
TIES	Ties push.
SETTLING WAGERS, HAND RANKINGS	The hand closest to 21, dealer or player, wins the player wager.
HITTING TO TWENTY ONE	• If the dealer hits to 21, then he receives single from each player, unless the player has 21, which pushes. • If a player hits to 21 and the dealer does not have 21, the dealer pays the player their stakes.
VARIATIONS	Describes several games related to blackjack, including pontoon, farmer, and fifteen (quince).

Attachment B

BLACKJACK GAME RULES INDEX

1. Hoyle's Games Improved (NY, George Long) (1825)
2. American Hoyle (3rd Ed. New York, Dick and Fitzgerald) (1864)
3. Hoyle's Games (Phila., Lippincott) (1864)
4. Hoyle's Games (Phila., Lippincott) (1872)
5. Hoyle's Games (Boston, DeWolfe, Fiske and Co.) (1875)
6. Modern Pocket Hoyle (NY Dick & Fitzgerald) (1880)
7. American Hoyle, Foster (NY, Dick & Fitzgerald) (1885)
8. Standard Hoyle (NY Excelsior Pub.) (1887)
9. Hoyle's Games America's Complete Handbook (Phil. Crawford Co.) (1890)
10. Hoyle's Games (New York, McClure Co.) (1907)
11. Hoyle's Games Modernized (London / NY, Dutton & Co.) (1909-13)
12. The New Hoyle, Seymour ed. (Chicago/NY: Laidlaw Brothers) (1929)
13. U.S. Playing Card Co., The Official Rules of Card Games, Hoyle Up to Date 32nd Ed. (1932)
14. U.S. Playing Card Co., The Official Rules of Card Games, Hoyle Up to Date 47th Ed. (1950)
15. Scarne's Encyclopedia of Games (New York, Harper & Row) (1973)

Book
Common Table.



HOYLE'S GAMES

IMPROVED.

GV
1243
H855
1825
C.3

CONTAINING

PRACTICAL TREATISES

ON

WHIST,	CONNEXIONS,
QUADRILLE,	ALL FOURS,
PIQUET,	SPECULATION,
QUINZE,	PAM-LU,
VINGT-UN,	BRAG,
LANSQUENET,	BACKGAMMON,
PHARO,	DRAUGHTS,
ROUGE ET NOIR,	HAZARD,
CRIBBAGE,	CHESS,
MATRIMONY,	GOFF or GOLF,
CASSINO,	CRICKET,
REVERSIS,	AND
PUT,	BILLIARDS.

Carefully revised and corrected from the latest and best Authorities.

NEW-YORK:

PUBLISHED BY GEORGE LONG,
NO. 71 PEARL-STREET

W. E. Dean, Printer, 36 Stone-street.

1825.

THE

GAME OF VINGT-UN.

THE game of Vingt-un, or Twenty-one, resembles the game of Quinze. It may be played by two or more persons, and, as the deal is advantageous, and often continues for a considerable time with the same person, it is customary to determine it at the commencement by the first ace turned up, or in any other mode that may be agreed upon.

The cards are all dealt out in succession, unless a natural vingt-un occurs; and in the meantime the pone, or youngest hand, should collect those that have been played, and shuffle them together, in order that they may be ready for the dealer against the period when he shall have distributed the whole pack.

In the first place the dealer is to give two cards, by one at a time, to each player, including himself. He is then to ask every person in rotation, beginning with the eldest hand on the left, whether he stands or wishes to have another card: which, if required, must be given from off the top of the pack, and afterwards another, or more if desired, till the points of the additional card or cards, added to those dealt, exceed or make twenty-one exactly, or such a number less than twenty-one as may be judged proper to stand upon.

But when the points exceed twenty-one, then the cards of that individual player are to be thrown up directly, and the stake paid to the dealer, who also is in turn entitled to draw additional cards, and on taking a vingt un is to receive double stakes from all who stand the game, excepting such other players as may chance to have twenty-one; between whom it is thereby a drawn game.

When any adversary has a vingt-un, and the dealer

has not, in that case, the opponent so having twenty-one wins double stakes from him.

In the other cases, excepting where a natural vingt-un happens, the dealer pays single stakes to all whose numbers under twenty-one are higher than his own, and receives from those who have lower numbers. But nothing is paid or received by those who happen to have similar numbers with the dealer; and when the dealer draws more than twenty-one, he is to pay to all who have not thrown up their cards.

Whenever twenty-one is dealt in the first instance, it is styled a natural vingt-un, and should be declared immediately. It entitles the possessor to deal, and also to double stakes from all the players, unless there shall be more than one natural vingt un. In this case the younger hand or hands so having the same, are excused from paying to the eldest; who takes the deal of course.

An ace may be reckoned either as eleven, or as one.

The court cards are counted as ten, and the rest of the pack according to their points.

The odds of this game depend merely upon the average quantity of cards likely to come under, or to exceed twenty-one. For example: If those in hand make fourteen exactly, it is seven to six that the one next drawn does not make the number of points above twenty-one: but if the points be fifteen, it is seven to six against that hand. Yet it would not therefore, in all cases be prudent to stand at fifteen; for as the ace may be calculated both ways, it is rather above an even wager that the adversary's two first cards amount to more than fourteen.

A natural vingt un may be expected once in seven coups when two, and twice in seven times, when four persons play; and so on in proportion to the number of players.

THE

AMERICAN HOYLE;

OR,

GENTLEMAN'S HAND-BOOK OF GAMES:

CONTAINING

ALL THE GAMES PLAYED IN THE UNITED STATES,

WITH

RULES, DESCRIPTIONS, AND TECHNICALITIES, ADAPTED TO THE AMERICAN METHODS OF PLAYING.

BY "TRUMPS."

Illustrated with numerous Diagrams and Engravings.

TO WHICH IS APPENDED

AN ELABORATE TREATISE ON THE DOCTRINE OF CHANCES.

NEW YORK:
DICK & FITZGERALD, PUBLISHERS.
1864

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DICK & FITZGERALD,

In the Clerk's Office of the District Court of the United States for the Southern District of New York.

M'OREA AND MILLER, STEREOTYPERS. C. A. ALVORD, PRINTER.

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CALLING THE LAST TURN.

The bank's greatest per centage is when players call the last turn, as here illustrated:

Suppose the cards remaining in the box to be the 4, 5, and 6; the turn may come 4, 5—4, 6—5, 4—5, 6—6, 4—or 6, 5; therefore, it may come six different ways, but he who calls it correctly receives only four for one, or four times the amount of his stake.

When the last turn happens to be a "cat," it may come three different ways, but the bank pays only two for one.

Splits are a strong and certain per centage in favor of the bank, therefore, all careful players prefer single cards, so as to avoid the possibility of being split. The chances of splits vary according to the number of similar cards remaining among those undealt.

TABLE EXHIBITING THE ODDS AGAINST WINNING ANY NUMBER OF EVENTS SUCCESSIVELY: APPLICABLE TO FARO, OR ANY OTHER GAME OF CHANCE.

That the player wins or loses the first time is an even bet.

That he does not win twice together, is 3 to 1; three successive times, 7 to 1; four successive times, 15 to 1; five successive times, 31 to 1; six successive times, 63 to 1; seven successive times, 127 to 1; eight successive times, 255 to 1; nine successive times, 511 to 1; ten successive times, 1,023 to 1; and so on, to any number, doubling every time the last odds, and adding one for the stake.

VINGT-UN.

For a little gentle gambling—say for trifling stakes of a dime or ten thousand dollars—there is no more easily acquired game than Vingt-un; certainly few more amusing.

Vingt-un (twenty-one) may be played by two or more players; about six or eight is the best number. The cards bear the same respective values as in Cribbage. The tens and court cards are each reckoned for ten; but *the ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

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Having determined to deal by lot—which may be done simply by shuffling the pack, and then giving each player a card, the first possessor of the Knave having the deal—counters or small stakes having been determined on, the dealer holds the pack with their faces beneath, and after the "burnt card" is turned, *i. e.*, after the top card is put on the bottom of the pack, with its back outwards, he proceeds to give a single card to each player, and one to himself, all face downwards. Having done this, he distributes a second card in like manner, beginning with the elder hand, or left-hand neighbor. The players then examine their hands, and the dealer looks at his two cards, and if either of them should have a "*natural*," that is, an Ace and a tenth card, he immediately exposes his hand, and receives from the dealer double the amount of his stake. If the dealer should have a "natural," he immediately shows it, and receives double from each player, according to their individual stakes. The cards are then all thrown up and another deal made, as before; but, should the dealer not have a "natural," he proceeds with the game by asking each one in succession if he wishes to have another card, or stand on the two he has. The usual phrase is, "Are you content?" If the elder hand is content with his hand, he says, "Content," and places his cards on the table, face downwards, to await the result of the dealer's own cards. If he wants one or more cards he says so, and the dealer gives him from the top of the pack as many as he requires, dealing them face up, as they must remain. If the court cards, Tens, &c., exceed twenty-one in number when added together, the player is said to have "overdrawn," in which case he must throw his cards into the centre of the table, and deliver his stake to the dealer. But if the pips and Tens on all his cards make, when added up, twenty-one, or less, and he is "content," he places his money upon his cards, and awaits the events of the round. And so with each player till all are served. The dealer then lays his own cards, face upwards, on the table. He, too, has the privilege of taking other cards from the pack, should the number be not near enough to twenty-one to allow him to stand. When he is satisfied with his hand he says, "I stand," and all the players face their cards on the table. Should the dealer overdraw, he must pay each and all of the players the amount of their bets, excepting those who have overdrawn themselves. To all those whose hands are twenty-one, or nearer to twenty-one than his own, he pays a stake equal to that placed upon

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the cards; while he receives the stakes from all whose hands are less in number than his own.

In this way the deal goes on till one of the players turns up a "natural," when he becomes dealer, and proceeds as before.

This is the simple description of a very interesting and sometimes rather noisy game, especially if more than half-a-dozen play.

The dealer and each of the players has the privilege of making two hands, if the first two cards given him be of like character, as two Nines, Kings, Aces, &c. In this case each party pays and receives on both hands. (But in the case of a "natural" occurring in a doubled hand, the holder receives only a single stake on each, because to obtain a "natural" the first two cards only may be counted.)

This is Vingt-un, as most generally played; but in some companies the "natural" receives double stakes from all the players, and treble from the dealer—a plan that is apt to make the game a little too exciting, especially when counters represent cash.

The following is another way in which it is sometimes played: Each player whose cards are under twenty-one pays one stake into the pool; those who overdraw pay two, and those who make just twenty-one, in three or more cards, pay nothing. The pool accumulates thus till some one has a natural Vingt-un, which entitles him to the whole.

Another mode, which is quite modern, and often played by sporting men, is, for the dealer to expose his own hand, by dealing his cards face up. This gives the player the advantage of knowing the strength of the dealer's hand, so that he can stand or draw accordingly.

RULES OF VINGT-UN.

1. The first deal must be determined by chance—as by cutting the cards, obtaining the first Knave, &c.

2. As in all games, when money is involved, the dealer has the right to the last shuffle and cut, which being done, he takes the top card and places it on the bottom of the pack, *back outwards*. This is called the "*burnt card*."

3. The two original cards dealt must remain face down, but those drawn must remain face up, and when the player is "content" he must place his stake upon his cards, which indicates that he is content.

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4. All bets must be made before the first card is dealt.

5. In case of a misdeal, the stakes must be withdrawn and the cards dealt over again.

6. The holder of a "natural," after the first round, is entitled to the deal.

7. The dealer is at any time allowed to sell, and any player to purchase, the deal. The dealer may also pass the deal to any one desirous of having it.

8. The "natural" must consist only of an Ace and a tenth card, *dealt in the first two rounds*. In the case of double or treble hands, an Ace and a tenth card form "acquired" and not "natural" Vingt-uns, and receive or pay only single stakes.

9. The player who overdraws must immediately declare the fact, and pay his stake to the dealer.

10. Ties stand-off.

11. No stake can be withdrawn, added to, or lessened, after it has been once laid on the card; but it must be allowed to remain till the dealer declares he stands.

12. No stake higher than that agreed to at the commencement of the game is allowed.

13. The occurrence of a "natural" during the first deal does not cause its forfeiture, the dealer being allowed to exhaust the whole pack.

This and other regulations must, however, be made by agreement among the players at the commencement of the game.

CHANCES OF THE GAME.

The odds at Vingt-un of course depend upon the average number of pips and Tens on two cards under twenty-one. *Par exemple:*

If the two cards in hand make fourteen, it is seven to six that the one next drawn does not make the number of points above twenty-one; but, if the points be fifteen, it is seven to six against that hand. Yet it would not, therefore, always be prudent to stand at fifteen; for, as the Ace may be calculated both ways, it is rather above an even bet that the dealer's first two cards amount to more than fourteen. A "natural" Vingt-un may be expected once in eight deals, when two, and twice in eight, when four people play, and so on, according to the number of players.

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HOYLE'S GAMES:

CONTAINING

THE ESTABLISHED RULES AND PRACTICE

OF

WHIST,
QUADRILLE
PIQUET,
QUINZE,
VINGT-UN,
CASSINO,
PUT,
ALL FOURS,
POPE JOAN,
THIRTY-ONE,
BRAG,
COMMERCE
EARL OF COVENTRY,
LANSQUENET,
LOO,
ECARTE,
CRIBBAGE,
FIVE AND TEN,
PHARO,
ROUGE ET NOIR,
MATRIMONY.
EUCHRE,
POKER, OR BLUFF,
REVERSIS,
CONNEXIONS,
SPECULATION,
SNIP, SNAP, SNORE 'EM
BOASTON.
CATCH THE TEN,
COMMIT,
LIFT SMOKE,
LOTTERY,
CHESS,
BACK-GAMMON,
DRAUGHTS,
HAZARD,
DOMINO,
CRICKET,
BILLIARDS,
TENNIS,
GOFF, OR GOLF,
HORSE-RACING,
COCKING,
TWENTY-DECK POKER,
EO,
ARCHERY, BOWLS, &c.

PHILADELPHIA:
J. B. LIPPINCOTT & CO.
1864.

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case of equality, and any one drawing above 31, loses of course.

N. B.—The three stakes may be all gained by one person, in which case he is entitled, in some companies, to three more from each player; but this advantage is usually set aside, as savouring too much of gambling.

VINGT-UN, OR TWENTY-ONE,

IS played with a complete pack of cards, and by any number of persons. The game consists merely in endeavouring to get such cards as will make up the number of twenty-one pips. The knave reckons for 11, the ace for 1, or for 11, at the option of the player holding it, the king, queen, and ten, for 10, and the rest of the cards for the number of spots on them respectively.

Each of the party having deposited an equal stake in the pool, the cards are cut, and the dealer gives two one at a time, to each player. If the elder hand gets a knave or an ace, with another pictured card or a ten, he has won the game, being twenty-one. If not, he may ask the dealer for one or more cards in succession, examining the first, however, before he asks a second, but runs the risk of overdrawing, or making more than 21, in which event he most lose. Each player does the same, and the person who is twenty one, or nearest to it (but under,) wins the game, and takes the stakes of all the rest of the players. In the event of two being equal, the elder hand of the two wins. If all the party happen to overdraw, there must be a new deal and game, as no ore has won.

N. B.—It is not necessary that the cards should be of one suit.

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Vingt-un is sometimes played in a less simple manner than that above described, as follows:—

The deal being advantageous, it is usually determined at the commencement by the first ace turned up. The dealer proceeds as above described, and all who overdraw throw up their cards immediately, and pay their stakes to the dealer. If the dealer makes 21 exactly, he receives double stakes from all who stand the game, except those who may also have a vingt-un, or 21, between whom and the dealer it is a drawn game. When any player has 21, and the dealer not, the player wins double stakes from the dealer and the rest of the players who have not 21. If none of the party has 21, then the dealer pays single stakes to all whose numbers under 21 are higher than his own, and receives from those who are lower; but nothing is paid or received by those who hold equal numbers with the dealer. When the dealer draws above 21, he pays to all who have not done so.

If 21 is dealt in the first instance, that is, in the first two cards, it is styled a *natural vingt-un*, and should be declared immediately, as it entitles the possessor to the deal, and to double stakes from all the players, except those who likewise happen to have a natural vingt-un.

N. B.—In this game, the cards are all dealt out in succession, and the *pone*, or younger hand, should collect the cards as they are thrown up, and shuffle them together, to be ready for the dealer when he has distributed the whole pack. The deal continues with one person till a natural vingt-un occurs; and in all cases of equality, the elder hand has the preference, after the dealer

The following is another way in which it is sometimes played. Each player whose cards are under 21 pays one stake into the pool, those who overdraw pay two and those who make just 21 in three or more

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cards pay nothing. The poo. accumulates thus till some one has a natural vingt-un, which entitles him to the whole.

QUINZE.

THIS is a French game, very similar to Vingt-un, described above, and is much admired for its simplicity and fairness, depending entirely upon chance, and not requiring that attention which many other games do. It is usually played by two persons, and is called Quinze from Fifteen being the game, which is made as follows. The cards are shuffled by both players, and after they have cut for the deal, which is determined by the lowest card, the dealer is authorised to shuffle them again; after this the adversary cuts them, and the dealer gives one card to his opponent, and another to himself. Should the dealer's adversary not approve of his card, he is entitled to have as many cards given him successively, as will make fifteen, or come nearest to that number, which are commonly given from the top of the pack. For example: If he should have a deuce, and draws a five, which amount to seven, he should continue going on, in expectation of coming nearer fifteen; should he draw an eight, which make just fifteen, he, as elder hand, is certain of winning the game; but should he overdraw himself, and make more than fifteen, he loses, unless the dealer should do the same, which constitutes a draw game, and they double the stakes; thus going on till one of them wins the game, by standing and being nearest fifteen. Upon the close of each game, the cards are packed and shuffled, when the players again cut for deal, the advantage being invariably for the elder hand.

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HOYLE'S GAMES:

CONTAINING

THE RULES

FOR PLAYING

Fashionable Games.

WITH COPIOUS DIRECTIONS FOR

BOASTON,
BLIND HOOKEY,
WHIST,
QUADRILLE,
SNIP, SNAP,
PIQUET,
QUINZE,
VINGT-UN,
LANSQUENET,
PHARO,
COVENTRY,
ROUGE ET NOIR,
CRIBBAGE,
MATRIMONY,
CASSINO,
REVERSIS,
PUT,
CONNEXIONS,
ALL FOURS,
SPECULATION,
LOTTERY,
POPE JOAN,
COMMERCE,
EO,
PAM-LOO,
BRAG,
DOMINO,
BACK-GAMMON,
DRAUGHTS,
HAZARD,
THIRTY-ONE,
CHESS,
GOFF, or GOLF,
CRICKET,
BILLIARDS,
TENNIS,
FIVE AND TEN,
CATCH THE TEN,
ECARTÉ,
EUCHRE,
BLUFF, or POKER,
TWENTY-DECK POKER,
ARCHERY,
BOWLS, or TEN-PINS,
HORSE-RACING,
COCKING.

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1872.

THE GAME OF VINGT-UN.

The Game of Vingt-un, or twenty-one, resembles the game of Quinze. It may be played by two or more persons, and as the deal is advantageous, and often continues for a considerable time with the same person, it is customary to determine it at the commencement by the first ace turned up, or in any other mode that may be agreed upon.

The cards are all dealt out in succession, unless a natural vingt-un occurs; and in the meantime the pone, or youngest hand, should collect those that have been played, and shuffle them together, in order that they may be ready for the dealer against the period when he shall have distributed the whole pack.

In the first place the dealer is to give two cards, by one at a time, to each player, including himself. He is then to ask every person in rotation, beginning with the eldest hand on the left, whether he stands or wishes to have another card; which, if required, must be given from off the top of the pack, and afterward another, or more if desired, till the points of the additional card or cards, added to those dealt, exceed or make twenty-one exactly, or such a number less than twenty-one as may be judged proper to stand upon.

But when the points exceed twenty-one, then the cards of that individual player are to be thrown up directly, and the stake paid to the dealer, who also is in turn entitled to draw additional cards, and on taking a vingt-un is to receive double stakes from all who stand the game, excepting such other players as may chance to have twenty-one; between whom it is thereby a drawn game.

When any adversary has a vingt-un, and the dealer has not, in that case, the opponent so having twenty-one wins double stakes from him.

In the other cases, excepting where a natural vingt-un happens, the dealer pays single stakes to all whose num

bers under twenty one are higher than his own, and receives from those who have lower numbers. But nothing is paid or received by those who happen to have similar numbers with the dealer; and when the dealer draws more than twenty one, he is to pay to all who have not thrown up their cards.

Whenever twenty one is dealt in the first instance, it is styled a natural vingt un, and should be declared immediately. It entitles the possessor to deal, and also to double stakes from all players, unless there shall be more than one natural vingt un. In this case the younger hand or hands so having the same, are excused from paying to the eldest: who takes the deal of course.

An ace may be reckoned either as eleven, or as one.

The court cards are counted as ten, and the rest of the pack according to their points.

The odds of this game depend merely upon the average quantity of cards likely to come under, or to exceed twenty-one. For example: If those in hand make fourteen exactly, it is seven to six that the one next drawn does not make the number of points above twenty-one: but if the points be fifteen, it is seven to six against that hand. Yet it would not therefore, in all cases, be prudent to stand at fifteen: for as the ace may be calculated both ways, it is rather above an even wager that the adversary's two first cards amount to more than fourteen.

A natural vingt-un may be expected once in seven coups when two, and twice in seven times, when four persons play; and so on in proportion to the number of players.

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HOYLE'S GAMES.

CONTAINING ALL

THE MODERN METHODS OF PLAYING THE LATEST AND MOST FASHIONABLE GAMES.

BY

THOMAS FRERE.

WITH A BRIEF HISTORY OF PLAYING CARDS.

IMPROVED EDITION.

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Vingt-un.

VINGT-UN, or Twenty-one, is a very interesting game, and may be played by two or more people. It is essentially a family game, and when played as such, the stakes are usually represented by counters, which may be of any value say sixpence the dozen, or more. It is common to limit the stakes to be laid to a dozen of counters, or the amount in money which they represent. As the deal is advantageous, and often continues long with the same person, it is usual to determine it at the commencement by the first ace turned up, or any other mode that may be agreed upon.

The deal is retained by the person who commences, until a natural Vingt-un occurs, when it passes to the next in rotation.* (The old mode of play, however, is, that in the case of a natural Vingt-un the deal passes to the holder, and many still adhere to this custom. This item of the game must, therefore, be regulated by the custom of the table, or be previously agreed.) The poney or youngest hand should collect the cards that have been played, and shuffle them together ready for the dealer against the period when he shall have distributed the whole pack.

The dealer begins by giving two cards, one at a time, face downwards, to each player, including himself. After the first card has been dealt round, each places his stake upon it (which may, if he chooses, be as low as a single counter), and then receives the second card; but the dealer, upon the stakes being all laid, and before proceeding with the deal, looks at his own card, and if he thinks proper (having perhaps an ace, ten, or court-card), he may double the stakes, which he announces by crying "double." He then distributes a second card to each, and lastly to himself. Should he chance to have a natural Vingt-un, he declares it at once, before any more cards are dealt, and collects the stakes (which, by a Vingt-un, are doubled), but should he have drawn less than 21, the game proceeds thus: The dealer inquires of each player in rotation, beginning with the eldest hand on the left, whether he stands, or wishes for another card, which, if required, must be given from off

* Should a natural Vingt-un occur in the first round it does not put out the dealer being allowed a *misericorde*.

the top (face upwards) of the pack, and afterwards another or more, if requested, till the points of the additional card or cards, added to those dealt, exceed or make 21 exactly, or such a number less than 21 as the player may choose to stand upon; but when the points exceed 21, the player is technically said to have overdrawn, and his cards are to be thrown up forthwith, and the stake laid on them paid to the dealer. When the dealer has gone the round of the table in this manner, he turns up his own cards to the view of the company, and should he have any number of points between, say from 17 to 20, he usually "stands," that is, pits his cards against the other players. Those under his number, as well as ties,* pay—those above it, receive.* If the dealer should have only 14 or 15 points in his first hand, the chances would be against him were he to stand on so small a number. He would therefore draw another card, and should this be a very low one (an ace or a deuce), and he have reason to suppose, by the extra cards dealt round, that he had to contest high numbers, he would draw again, and if he obtained 19 or 20 points would then probably win on more than he loses, the average of chances being in his favor; if by drawing he should happen to make up 21, he would receive double from all, excepting from the ties and those who had already thrown up; if more than 21, he would have to pay all who stand, paying the Vingt-uns double.

Should either the dealer or a player happen to turn up two cards of the same denomination, for instance, two aces, deuces, or any other number, or two kings, two queens, &c., he would have the choice of going on both, and should the next card he draws be a triplicate, he may go on all three. If the cards happen to be aces, which count either as 1 or 11, at the option of the player, and if by great luck he should successively draw three tens, or court-cards, thus making three natural Vingt-uns, he would obtain double stakes upon each, therefore six times as much as the stakes placed on the various hands; and should he, on laying his first card, have cried "double," the stakes payable would, in such case, be twice doubled, therefore upon the three cards twelve-fold. This is an extreme case, cited merely to show the nature of the game. It commonly happens, however

* Ties are the principle advantage of the dealer

that when either dealer or player "goes" on several cards, he loses on one or more, and thus neutralizes his gains. Players, as already intimated, have the same right of "going" on several cards, as the dealer.

When any player has a Ving.-un, and the dealer not, then the player wins double stakes from him; in other cases, except a natural Vingt-un happens, the dealer pays single stakes to all whose numbers under 21 are higher than his own, and receives from those who have lower numbers; players who have similar numbers to the dealer pay; and when the dealer draws more than 21, he overdraws, and has to pay to all who have not thrown up, as already stated.

Twenty-one, whensoever dealt in the first two cards, is styled a natural Vingt-un, and should be declared immediately. Hoyle says that this entitles the possessor to the deal, besides double stakes from all the players, unless there shall be more than one natural Vingt-un, in which case the younger hand or hands so having the same, are exempted from paying to the eldest. But this rule, like that mentioned at page 73, is nearly obsolete. It is not now customary to allow any except the dealer to take double stakes from the company, in respect to his natural Vingt-un.

One of the first thoughts of the dealer, after the cards have been cut, should be to look for *brulet*, which is a natural Vingt-un formed by the bottom and top card, when they happen to be an ace and tenth card. The card or cards looked at must be thrown out, and mixed with those collected by the poney. Brulet either clears the board of the stakes laid (usually one or two counters levied on each player, at the commencement of every game, and collected into a tray), or takes the amount of the limit from each, as may be agreed.

The deal, it should be observed, may be sold to the best bidder, and, as it is undoubtedly of some advantage, a buyer will generally be found. But should a timid player object to the deal, and no buyer be found, he may decline it, and so let it pass to the next.

[N. B. An ace, as already intimated, may be reckoned either as 11 or 1; every court-card is counted as 10, and the rest of the pack according to their points.]

The odds of this game merely depend upon the average quantity of cards likely to come under or exceed 21; for

example, if those in hand make 14 exactly, it is 7 to 6 that the one next drawn does not make the number of points above 21, but if the points be 15, it is 7 to 6 against that hand; yet it would not therefore always be prudent to stand at 15, for as the ace may be calculated both ways, it is rather above an even bet that the adversary's two first cards amount to more than 14. A natural Vingt-un may be expected once in seven coups when two, and twice in seven when four people play, and so on according to the number of players.

All Fours.

This game, usually played by two people, sometimes by four, with a complete pack, derives its name from the four chances therein, for each of which a point is scored, namely, *high*, the best trump out; *low*, the smallest trump dealt; *jack*, the knave of trumps; *game*, the majority of pips reckoned from such of the following cards as the respective players have in their tricks, viz.: every ace is counted as 4; king, 3; queen, 2; knave, 1; and ten for 10. Low is always scored by the person to whom it was dealt; but jack being the property of whoever can win or save it, the possessor is permitted to revoke and trump with that card and when turned up as trump the dealer scores; it is also allowable for the player who lays down a high or low trump to inquire at the time whether the same be high or low.

After cutting for deal, at which either the highest or lowest card wins, as previously fixed, six cards are to be given to each player, either by three or one at a time, and the thirteenth turned up for trump; then if the eldest does not like his card, he may, for once in a hand, say, *I beg*, when the dealer must either give a point or three more cards to each, and turn up the seventh for trump; but if that should prove of the same suit as the first turned up, then three cards more are to be given, and so on till a different suit occurs. The cards rank as at Whist, and each player should always strive to secure his own tens and court-cards, to take those of the adversary, to obtain which, except when commanding cards are held, it is usual to play

THE

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AS PLAYED

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BEING

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BY "TRUMPS."

Tenth Edition,

REVISED AND CORRECTED.

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of the deal into the pool. The game goes on in this way until the pool is taken by some one of the players, when the next hand is *bold stand*, and is dealt and played as first described. Sometimes *club-law* is introduced, when all must play when a Club happens to be turned trump.

VINGT-UN.

VINGT-UN (twenty-one) may be played by two or more players: about six or eight is the best number. The cards bear the same respective values as in Cribbage. The Tens and court-cards are each reckoned for ten; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

Having shuffled the pack, the deal must be determined by giving each player a single card, and the one receiving the lowest deals. The players then make their bets, and the cards having been shuffled and cut, the dealer holds the pack face downwards, and, taking the top card (*i. e.*, "burnt card"), places it on the bottom of the pack, back outwards, and then immediately proceeds to give a single card to each player, and one to himself, all face downwards. Having done this, he distributes a second card in like manner, beginning with the elder hand, or left-hand neighbor. The players then examine their hands, and the dealer looks at his two cards, and if either of them should have a "*natural*," that is, an Ace and a tenth card, he immediately exposes his hand, and receives from the dealer double the amount of his stake. If the dealer should have a "natural," he immediately shows it, and receives double from each player, according to their individual stakes. The cards are then all thrown up and another deal made, as before; but, should the dealer not have a "natural," he proceeds with the game by asking each one in succession if he wishes to have another card, or stand on the two he has. The usual phrase is, "Are you content?" If the elder hand is content with his hand, he says, "Content," and places his cards on the table, face downwards, to await the result of the dealer's own cards. If he wants one or more cards he says so, and the dealer gives him from the top of the pack as many as he requires, dealing them face up, as they must remain. If the value of the cards exceed twenty-one in number when added together, the player is said to be "*burst*," in which case he must throw his cards into the centre of the table, and deliver his stake to the dealer. But if the pips and Tens on all his cards make, when added up, twenty-one, or less, and he is "content," he places his money upon his cards, and awaits the events of the round. And so with each player till all are served. The dealer then lays his own cards, face upwards, on the table. He, too, has the privilege of taking other cards from the pack, should the number be not near enough to twenty-one to allow him to stand. When he is satisfied with his hand he says,

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"I stand," and all the players face their cards on the table. Should the dealer overdraw, he must pay each and all of the players the amount of their bets, excepting those who have overdrawn themselves. To all those whose hands are twenty-one, or nearer to twenty-one than his own, he pays a stake equal to that placed upon the cards; while he receives the stakes from all whose hands are less than his own. Ties with the dealer stand off.

In this way the deal goes on till one of the players turns up a "natural," when he becomes dealer, and proceeds as before.

The dealer and each of the players has the privilege of making two hands, if the first two cards given him be of like character, as two Nines, Kings, Aces, &c. In this case each party pays and receives on both hands. (But, in thus playing a double hand, an ace on a tenth card, or vice versa, counts only for Vingt-un, and not for a "natural," which must consist of the first two cards received. See Law 8.)

Usually the whole pack is dealt out before the cards are shuffled, the cards belonging to each round remaining on the table till the whole pack is exhausted. Sometimes, when the party is large, two or more packs are mixed together and played in the same manner as a single pack.

The foregoing is a description of the game of Vingt-un as it is regularly played in this country. The following variations are sometimes introduced, but have no binding force, unless agreed upon by the players before commencing the game.

The *English* game is played as follows: Any player may look at the first card dealt to him previous to making a bet. The dealer has also the privilege of seeing his first card, and may insist on all the players doubling their stakes. This he commonly does if he has an Ace or a tenth card in the first round, or when the stakes are too low to please him. Ties pay to the dealer; but directly a player receives his second card he should look at it, and if he has obtained a "natural," he should declare it immediately. Thus he would get his Vingt-un before the dealer had received his second card, and would therefore be entitled to be instantly paid double stakes, even though the dealer himself were fortunate enough to get a "natural."

Another variation is played thus: the dealer has the privilege of looking for the *brulet* at the commencement of each deal. The *brulet* consists of the top and bottom cards of the pack after it has been shuffled and cut. If a "natural" occurs in the *brulet*, the dealer receives double stakes from all the players except the ties, from which he takes singles. Of course he must not declare his "natural" till all the players have staked. But if he take the *brulet* he is not compelled to stand upon it; but after he has dealt all the players as many cards as they demand, he may add to his own pair as many as he thinks fit.

In other companies the "natural" receives double stakes from all the players, and treble from the dealer—a plan that is apt to make the game a little too exciting, especially when counters represent cash.

The following is another way in which the game is sometimes played:

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each player whose cards are under twenty-one pays one stake into the pool; those who overdraw pay two, and those who make just twenty-one, in three or more cards, pay nothing. The pool accumulates thus till some one has a "natural" Vingt-un, which entitles him to the whole.

Another mode, which is quite modern, and often played by sporting men, is, for the dealer to expose his own hand, by dealing his cards face up. This gives the player the advantage of knowing the strength of the dealer's hand, so that he can stand or draw accordingly.

TECHNICAL TERMS USED IN VINGT-UN.

Burnt Card.—After the dealer has shuffled and cut the pack, he must, before dealing, take the top card and place it on the bottom of the pack, back outwards. This card is called the burnt card.

Tenth Cards.—The court-cards and Tens of each suit all count for ten, as in Cribbage, and are called tenth cards.

Natural.—If the first two cards dealt to any player be an Ace and any "tenth card," these, being exactly twenty-one, make a Natural Vingt-un. (*See Splits*).

Acquired Vingt-un.—When the first two cards dealt to a player be less than twenty-one, and, on calling for one or more cards, he obtain such as make his hand exactly twenty-one, this is called an Acquired Vingt-un.

Splits.—If the two cards dealt to a player should be pairs, he may, if he wish, lay them separately on the table, and use them as the first cards of two hands, and bet on each, but it must be borne in mind that he cannot have a "natural" on either hand, as he has already received two cards from the dealer.

Burst.—When a player, in drawing cards, has the misfortune to count more than twenty-one in his hand, it is said to be burst.

Content.—A term used when a player has received as many cards as he wishes, after having called for more cards from the dealer.

Pips.—The number of spots on the face of a card.

THE LAWS OF VINGT-UN

1. The first deal must be determined by giving a single card to each player—the lowest deals; and Ace is lowest.

2. As in all games, when money is involved, the dealer has the right to the last shuffle and cut, which being done, he takes the top card and places it on the bottom of the pack, *back outwards*. This is called the "*burnt card.*"

3. The two original cards dealt must remain face down, but those drawn must remain face up, and when the player is "content" he must place his stake upon his cards.

4. All bets must be made before the first card is dealt.

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5. In case of a misdeal, the stakes must be withdrawn and the cards dealt over again.

6. The holder of a "natural," after the first deal, is entitled to the deal.

7. The dealer is at any time allowed to sell, and any player to purchase, the deal. The dealer may also pass the deal to any one desirous of having it

8. The "natural" must consist only of an Ace and a tenth card, *dealt in the first two rounds*. In the case of double or treble hands, an Ace and a tenth card form "acquired" and not "natural" Vingt-uns, and receive or pay only single stakes.

9. The player who overdraws must immediately declare the fact, and pay his stake to the dealer.

10. Ties stand off.

11. No stake can be withdrawn, added to, or lessened, after it has been once laid on the card; but it must be allowed to remain till the dealer declares he stands.

12. No stake higher than that agreed to at the commencement of the game is allowed.

13. The occurrence of a "natural" during the first deal does not cause its forfeiture, the dealer being allowed to exhaust the pack.

MISTIGRIS.

This is a variety of the game of Draw Poker, sometimes called Fifty-Three Deck Poker. Mistigris is a name given to the blank card accompanying every pack; the player holding it has the right to call it what he chooses. For example: A *pair* with Mistigris becomes *triplets*; two pairs and Mistigris make a *full hand*; *triplets* with Mistigris are the same as *fours*; four of a suit filled with Mistigris constitute a *flush*, and, when straights are played, a sequence of four cards with Mistigris count as a *straight*.

In all other respects, this game is played in the same manner as Draw Poker, and is governed by the same laws.

THIRTY-ONE.

The Germans call this game "Schnautz." It is played with an entire pack of cards, and by any number of persons under seventeen Each player puts an equal stake into the pool; three cards are dealt to each, and a spare hand, which is turned up on the table. The object of the game is to get thirty-one, or as near it as possible, reckon-

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THE

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OR,

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TO WHICH IS APPENDED

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THIRTEENTH EDITION.

ENTIRELY RE-WRITTEN IN CONFORMITY WITH THE LATEST USAGES.

NEW YORK:

DICK & FITZGERALD, PUBLISHERS.

1885.

VINGT-UN.

Vingt-un may be played by any number of persons. A pack of fifty-two cards is required.

The tens and court cards are each reckoned for ten, and the other cards according to the pips on each; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

DEALING AND BETTING.

The deal having been determined, and the cards properly shuffled and cut, the players make their stakes, which must not exceed the limit agreed on.

It is sometimes agreed that the players may all look at the first card dealt to them before making their bets. The dealer also has the privilege of seeing his first card, and may insist on all the players doubling their bets. (*See* English Vingt-un, page 242.)

The dealer, holding the pack face downwards, takes the top card and places it upon the bottom of the pack, *back downwards*. This is called the *burnt card*, or *brulet*.

The dealer then delivers one card, face downwards, to each player in rotation, beginning to his left; he then repeats this operation, thus giving each player two cards.

CONDUCTING THE GAME.

The players all examine their hands, and the dealer asks each in rotation, the eldest hand first, whether he will take any cards. The usual phrase is, "Are you content?" If the player is satisfied with his hand, he says, "Content," and places his hand upon the table, face downwards. If the player is not content he calls for a card. The dealer then deals him a card face upwards on the table, and again asks "Are you content?" This operation is continued until the player is satisfied, and so on until each is served.

If the hand of a player who takes a card or cards amounts, including the cards drawn, to more than twenty-one, he throws his hand face downwards in the middle of the table, and delivers his stake to the dealer.

After all the players have stood or drawn, the dealer turns his hand face upwards on the table, and either stands or draws. If he overdraws he pays, according to the sums staked, to each player who has not over-

cards are re-cut and the dealer deals again. If, however, the pack be faulty; or if either of the other players touch their cards; or if a card is faced in the pack, the dealer deals again without penalty. If the dealer expose any of his own cards the deal stands good.

PASSING AND ANNOUNCING.

6. If a player once decline to announce, he cannot afterwards do so in that hand; this does not debar him from assisting as whister if called on.

7. If a player make an announcement which is superseded by another, he can, when his turn comes round again, augment his bid.

8. If all pass, the hand is played without any trump, and the player who takes the least number of tricks wins the pool.

REVOKING.

9. Each player must follow suit if possible, and if a suit is led and any one of the players having a card of the same suit shall play one of another suit to it, and the trick has been turned and quitted, that constitutes a revoke; but the error being discovered before the trick is quitted, or before the party having so played a wrong suit shall play again, the penalty only amounts to the card being treated as *exposed* and being liable to be called.

10. If a player make a revoke, his side forfeits three tricks to the opposing side.

LEADING AND PLAYING OUT OF TURN.

11. Should either of the players opposing the bidder *lead* a card out of turn, upon the demand of the bidder the card must be taken up, and it may be called any time during the hand; and the bidder may at his option call for a lead of any suit from the player whose proper lead it is. If the player called upon to lead a suit have none of the suit, the penalty is paid.

12. Should either of the players opposed to the bidder *play* a card out of turn, the bidder may call upon him to take his card up and play one of a lower rank, provided it does not cause a revoke. When a card is played out of turn, no player opposed to the bidder may win that trick.

EXPOSED CARDS.

13. All exposed cards are liable to be called, and must be left face upwards on the table. (*See* Laws of Whist, 46, etc., page 17.)

14. Being called on to play any suit or the highest or the lowest of any suit you may hold, should you fail to do so, you have made a revoke, and become liable to the penalty.

VINGT-UN.

Vingt-un may be played by any number of persons. A pack of fifty-two cards is required.

The tens and court cards are each reckoned for ten, and the other cards according to the pips on each; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

DEALING AND BETTING.

The deal having been determined, and the cards properly shuffled and cut, the players make their stakes, which must not exceed the limit agreed on.

It is sometimes agreed that the players may all look at the first card dealt to them before making their bets. The dealer also has the privilege of seeing his first card, and may insist on all the players doubling their bets. (*See* English Vingt-un, page 242.)

The dealer, holding the pack face downwards, takes the top card and places it upon the bottom of the pack, *back downwards*. This is called the *burnt card*, or *brulet*.

The dealer then delivers one card, face downwards, to each player in rotation, beginning to his left; he then repeats this operation, thus giving each player two cards.

CONDUCTING THE GAME.

The players all examine their hands, and the dealer asks each in rotation, the eldest hand first, whether he will take any cards. The usual phrase is, "Are you content?" If the player is satisfied with his hand, he says, "Content," and places his hand upon the table, face downwards. If the player is not content he calls for a card. The dealer then deals him a card face upwards on the table, and again asks "Are you content?" This operation is continued until the player is satisfied, and so on until each is served.

If the hand of a player who takes a card or cards amounts, including the cards drawn, to more than twenty-one, he throws his hand face downwards in the middle of the table, and delivers his stake to the dealer.

After all the players have stood or drawn, the dealer turns his hand face upwards on the table, and either stands or draws. If he overdraws he pays, according to the sums staked, to each player who has not over-

drawn. If he stands, or draws so that his hand does not exceed twenty one, he receives from or pays to each player in rotation, the one winning whose cards amount most nearly to twenty-one. Ties stand off. Players who have to pay the dealer throw their cards in the middle of the table without showing them. Players who claim anything from the dealer show their cards. When a player overdraws he is said to be *burst.*

If a player has an Ace and a court card dealt him, which reckons twenty-one (called a *natural Vingt-un),* he turns his hand face upwards on the table and receives double his stake from the dealer. The dealer, however, need not pay until he has looked at his own cards, as, if he also has a natural, it is a stand off. When the dealer has a natural, he similarly receives (except from naturals). No one draws, there being no chance of beating the dealer's hand.

If a player or the dealer has a pair dealt him originally, he may stake and draw on each card separately or not, as he pleases. If he goes on each, he separates the cards and puts a stake on each, and when it comes his turn to draw he says "I go on each." In this case each party pays and receives on both hands. But if a natural occur in a double hand, the holder receives only a single stake on each, because to obtain a natural the first two cards only may be counted.

When the hand is over, the same dealer continues to deal afresh from the portion of the pack that remains undealt. The cards previously dealt are collected and shuffled (or *made)* by the player to the right of the dealer, called the *pone.* At the end of each deal the pone similarly *makes* all the used cards, that they may be ready for the dealer when the pack is exhausted. When the dealer comes to the last, that is, the burnt card, he throws it face downwards into the middle of the table, and the *pone* cuts the cards already made, for the dealer to go on with.

The first natural puts the dealer out, but it is often agreed that the deal shall consist of a certain number of rounds; for example, that it shall be over when the pack has been twice dealt out. When this rule obtains, the game is often played with two packs of cards shuffled together, the deal being over when the whole of the two packs has been dealt out.

CHANCES OF THE GAME.

The odds at Vingt-un of course depend upon the average number of pips and Tens on two cards under twenty-one. For example: If the two cards in hand make fourteen, it is seven to six that the one next drawn does not make the number of points above twenty-one; but, if the points be fifteen, it is seven to six against that hand. Yet it would

not, therefore, always be prudent to stand at fifteen; for, as the Ace may be calculated both ways, it is rather an even bet that the dealer's first two cards amount to more than fourteen. A natural Vingt-un may be expected once in eight deals, when two, and twice in eight, when four, play, and so on, according to the number of players. The principal advantage to the dealer arises from the fact that all bursts have to pay, irrespective of his own hand.

LAWS OF VINGT-UN.

DETERMINATION OF DEAL.

1. When the players have taken their seats, one of them must be deputed to shuffle the pack, and (after having it cut by the player to his right) to deal a card face upwards to each player in rotation, beginning to his left. The player to whom an Ace first comes has the deal.

SHUFFLING AND CUTTING.

2. When the deal has commenced, only the dealer and the pone have a right to shuffle. The dealer has a right to shuffle last. The cards remaining undealt may not be shuffled, but only those presented to the dealer by the pone when the pack is exhausted.

3. In cutting at least four cards must be separated, and at least four left on the bottom packet.

4. If a card is exposed in cutting or in re-uniting the cut packets, or if there is any confusion of the cards, the pack must be re-shuffled and cut again.

DEALING.

5. After the cards have been cut by the pone, and before the deal is commenced, the dealer must take the top card from the pack and place it on the bottom of the same, back downwards. This card is called the burnt card, or brulet. The cards must be dealt face downwards, one at a time to each player in rotation, beginning with the player to the dealer's left.

6. If two cards are dealt together to one player, the mistake may be rectified before a third card is dealt. But if a third card is dealt before the error is discovered, the player who has the surplus card, having looked at his hand, must reject one card and give it, face downwards, to the pone.

7. If the dealer deals himself two cards together and then deals a third, the pone must draw a card at random from the dealer's hand.

8. If a card is exposed in dealing, the player may keep it or reject it; if he reject it, the rejected card is given to the pone. If the dealer expose one of his own cards, he must keep it.

9. Drawn cards must be dealt one at a time, face upwards on the table. Each player in rotation must be content before the next can draw a card. In drawing separately on pair cards, the player must be content on one card before drawing on another.

10. If two drawn cards are dealt together, the player may keep either or both. If he keeps only one, he cannot draw another card. The rejected card is given to the pone.

11. If the dealer in drawing gives himself two cards together, he must keep them both.

12. If a player is missed in dealing or drawing, he may have his hand completed from the pack, or may throw it up.

13. If the dealer in dealing miss himself and a player draws cards before the error is discovered, the dealer must pay to each player the amount of his stake, and double to a natural. If the error be discovered before any cards are drawn, the dealer may complete his hand from the top of the pack, and there is no penalty.

14. The burnt card must not be dealt or drawn.

15. If there is a faced card in the pack it must be rejected and given to the pone.

16. Should the dealer sell his deal, the buyer deals, but without changing his seat.

17. If a player (not the dealer) holds a natural Vingt-un, it puts the dealer out. The holder of a natural has the next deal, except it is the first hand of the deal, or the dealer also has a natural.

[Sometimes by agreement the dealer has a given number of deals; for example, he deals the pack twice out. If, when the pack is a second time nearly exhausted, he has cards left with which to commence a deal, he is entitled to complete the deal.]

STAKING AND PAYING.

18. Each player is bound to place his stake in front of him, distinct from his other counters or coins, before a card is dealt. When content with his hand, he puts it face downwards on the table, and places his stake on top of it. No stake can be withdrawn, added to, or lessened after it has been once made, but must be allowed to remain until the dealer declares he stands. No stake higher than that agreed to at the commencement of the game is allowed.

[Sometimes the English custom of staking is adopted, when it is agreed that each player may look at the first card dealt to him before making a bet. The

dealer also has the same privilege, and may insist on all the players doubling their stakes. *See* English Vingt-un.]

19. A player or dealer having a pair dealt may draw and stake on each separately. Tenth cards only pair with tenth cards of the same denomination, that is, Kings with Kings, and so on (*see* Law 9).

[In England the custom is as follows: If the first card drawn, or if the first and second cards are of the same denomination as the pair first dealt and split, the player may go on three or on all four cards.]

20. If a player draws on cards separately which do not pair, he pays the dealer on each hand.

21. When the dealer and a player tie, the two cancel or stand off, and neither receives from or pays to the other.

22. Overdraws pay the dealer at once. The player who overdraws, throws up his cards without exposing them, and the pone should not look at them.

23. When all the players have stood or drawn, the dealer must expose his hand face upwards on the table.

24. If the dealer overdraws, he pays all the players except those who have already overdrawn.

25. A player having a claim on the dealer, is bound to expose his hand to satisfy the dealer of the correctness of his claim. If a player mixes his hand with those thrown up without first exposing it, he must pay the dealer.

26. A natural Vingt-un must consist of an Ace and a tenth card dealt in the first two rounds. The dealer pays to and receives from a player for a natural, unless a tie should occur. In case of a double hand (*see* Law 19), an Ace and a tenth card form acquired and not natural Vingt-uns, and receive and pay only single stakes.

THE PONE.

27. The player to the right of the dealer must act as pone, and must collect and shuffle the used cards (called making them). When the pack is exhausted, he must present the made cards to the dealer and cut them.

AFTERCOMERS.

28. The place of an aftercomer is decided by the pone dealing, from the made cards, one card between each of the players, commencing to his left. The aftercomer takes the place where the first Ace falls, or, if there be no Ace dealt in the round, where the highest card falls.

ENGLISH VINGT-UN.

The *English* game is played as follows: Any player may look at the first card dealt to him previous to making a bet. The dealer has also the privilege of seeing his first card, and may insist on all the players doubling their stakes, in which case he pays double, if he loses. This he commonly does if he has an Ace or a tenth card in the first round, or when the stakes are too low to please him. Ties pay to the dealer; but when the dealer and another player both have a natural dealt in the same hand it becomes a stand off, the principle being that it is contrary to all card games for the best possible hand to lose. If any player draws cards that make his hand amount to twenty-one exactly (a *drawn Vingt-un*), he receives double his stake; and, similarly, if the dealer has a drawn Vingt-un, he receives double the players' stakes.

ROUNCE.

Rounce may be played by any number of persons not exceeding nine; but five or seven make a good game.

The game is played with a pack of fifty-two cards, which rank as at Whist.

DEALING.

One of the players must be deputed to shuffle the pack, and (after having it cut by the player to his right) to deal a card face upwards to each player in rotation, beginning to his left. The player to whom the lowest card is dealt has the deal.

After the cards have been shuffled and cut, the dealer gives five cards to each player in rotation, beginning with the player to his left, by alternate rounds of two and three at a time, or *vice versâ*. He also deals an extra hand of six cards in the centre of the table, called *dumby*.

The dumby must be dealt before the dealer takes the full complement of cards himself, and should be filled immediately preceding his own hand. When the cards have been dealt in the manner described, the dealer turns up the top card on the pack, which is the trump. After the first hand, the deal passes to the left.

DECLARING TO PLAY.

After the deal has been completed, each player in rotation, beginning

with the eldest hand, looks at his cards, and declares whether he will play his hand, take dumby, or resign. If he is satisfied with his cards, he says "I play," if he resigns, he says "I pass," and throws down his cards. If a player resigns, his interest in the pool ceases, unless he elects to exchange his hand for dumby.

The eldest hand has the first privilege of taking dumby, and if he elects to do so, he must place his hand in the centre of the table, face down, and discard one card from his new hand. If he declines to take dumby, then the option passes to the next player to his left, and so on in succession to the dealer.

Whoever takes dumby must play it. Any other player who thinks he cannot take a trick, may decline to play his hand.

When all refuse to play, then the player to the *right* of the dealer must play his hand, take dumby, or, in default of doing either, give the dealer five points.

The dealer, when he elects to play, may discard any card in his hand, and substitute for it the card turned up for trump.

PLAYING THE HAND.

After all have declared, the player first in hand of those who declare to play leads a card, and each person in rotation (to the left) plays a card to the lead; the cards thus played constitute a trick. The trick is won by the highest card of the suit led, or, if trumped, by the highest trump played. The cards rank as at Whist.

Suit must be followed; but if this is not possible, a player may trump or not, at his option.

The winner of a trick must lead a trump, if he can; if, however, he holds no trump, he may lead any card he chooses.

SCORING.

At the beginning of the game each player commences with fifteen points. The player who is the first to reduce his score to nothing wins the game.

The score is marked by means of three crosses, in the following manner: ✕✕✕. Each cross represents five points. When a player makes one point he rubs out the centre of the cross, thus: ✕, and when he makes another point he rubs out one of the remaining portions of the cross, and so on, until all are wiped out.

Each trick taken in play counts one point, and if a player fail to take a trick after entering to play his hand, he is *rounced*, that is, five points are added to his score.

THE

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AND

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WHETHER OF

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NEW YORK:
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VINGT-UN.

VINGT-UN (twenty-one) may be played by two or more players; about six or eight is the best number. The cards bear the same respective values as in Cribbage. The tens and court-cards are each reckoned for ten; but *the ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

Having determined the deal by lot—which may be done simply by shuffling the pack, and then giving each player a card, the first possessor of the knave having the deal—counters or small stakes having been determined on, the dealer holds the pack with their faces beneath, and proceeds to give a single card to each player, and one to himself, all face downward. Each player then places his stake on his card, and the dealer distributes a second card all round, beginning in each case with the elder hand—his left-hand neighbor. The players then examine their hands, and the dealer looks at his own two cards, when, if he thinks fit, he may "challenge the board," receiving or paying from all whose hands are less or more than his own, up to twenty. Failing, however, to do this, he asks each one in succession if he wishes to have another card, or stand on the two he has. The usual phrase is—"Do you stand?" If the elder hand is content with his hand, he says "Content," and places his cards on the table, face downward, to await the result of the dealer's own cards. If he wants one or more cards he says so, and the dealer gives him from the top of the pack as many as he requires. If the court-cards, tens, etc., exceed twenty-one in number when added together, the player is said to have "over-drawn," in which case he must throw his cards into the centre of the table, and deliver his stake to the dealer. But if the pips and tens on all his cards make, when added up, twenty-one or less, he puts them face downward on the table, and waits the event of the round. And so with each player till all are served. The dealer then lays his own cards face upward on the table. He, too, has the privilege of taking other cards from the pack, should the number be not near enough to twenty-one to allow him to stand. When

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he is satisfied with his hand, he says, "I stand," and all the players face their cards on the table. To all those whose hands are twenty-one or nearer to twenty-one than his own, he pays a stake equal to that originally placed on the single card: while he receives the stakes from all whose hands are less in number than his own, *including ties*. But to any player or players having an ace and a tenth card—which is termed a "natural Vingt-un"—he pays double stakes. The "natural" must always consist of the two cards first dealt. Should, however, the dealer himself have a "natural," he receives double stakes from all the players, and single from the ties. In this way the deal goes on till one of the players turns up a "natural," when he becomes dealer, and proceeds as before.

Twenty-one, whenever it consists of an ace and a tenth card, dealt in the first two rounds, entitles the player to double stakes from the dealer; and similarly from the players to the dealer, when the latter happens to get a natural. In the latter instance, the round is at an end on the dealer taking his second card, and he receives double stakes from all the players without the necessity of giving them a third card or more.

Ties pay to the dealer the stake ventured; but directly the player receives his second card he should look at it, and if he has obtained a natural he should declare it immediately. Thus he would get his vingt-un before the dealer had received his second card, and would therefore be entitled to be instantly paid, even though the dealer himself were fortunate enough to get an ace on his ten, or a tenth card on his ace.

The dealer has also the privilege of insisting on all the players doubling their stakes. This he commonly does if he has an ace or a tenth card in the first round, or when the stakes are too low to please him.

It is the duty of the younger hand to gather up the cards at the conclusion of each round in readiness for the next deal. In some companies the whole pack is dealt out before the cards are shuffled, the cards belonging to each round remaining on the table till the whole pack is exhausted. Generally, however, the pack is gathered up at the end of each deal, shuffled by the player at the left of the dealer, and cut by the player at his right. Sometimes, when the party is large, two packs are in use at the same time—one being shuffled and cut while the other is being dealt; or the two may be mixed together and played in the same manner as a single pack.

The dealer and each of the players has the privilege of making two hands, if the first two cards given him be of like character—as two nines, kings, aces, etc. In this case each party pays and receives on both hands. But in the case of a "natural" occurring in a doubled hand, the holder

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receives only a single stake on each, because to obtain a "natural" the first two cards only may be counted.

Again: The dealer has the privilege of looking for the *brulet* at the commencement of each deal. The *brulet* consists of the top and bottom cards of the pack after it has been shuffled and cut. If a "natural" occurs in the brulet, the dealer receives double stakes from all the players except the ties, from which he takes singles. Of course he must not declare his "natural" till all the players have staked. But if he take the brulet, he is not compelled to stand upon it; but after he has dealt all the players as many cards as they demand, he may add to his own pair as many as he thinks fit.

The odds at Vingt-un of course depend upon the average number of pips and tens on two cards under twenty-one.

If the two cards in hand make fourteen, it is seven to six that the one next drawn does not make the number of points above twenty-one; but if the points be fifteen, it is seven to six against that hand. Yet it would not, therefore, always be prudent to stand at fifteen, for as the ace may be calculated both ways, it is rather above an even bet that the dealer's two first cards amount to more than fourteen. A "natural" vingt-un may be expected once in eight coups, when two, and twice in eight, when four people play, and so on, according to the number of players.

This is Vingt-un as most generally played; but in some companies the "natural" receives double stakes from all the players, and treble from the dealer.

One of the great advantages possessed by the dealer is the taking of all stakes on the ties. The game is therefore played occasionally with a provision that ties are exempt from payment. Again, it is generally admitted that the occurrence of a "natural" during the first deal does not cause its forfeiture, the dealer being allowed to continue his deal. This and other regulations must, however, be made by agreement among the players at the commencement of the game.

RULES OF VINGT-UN.

The rules of Vingt-un are by no means fixed; we give them, however, as the game is generally played.—EDITOR.)

1. The first deal must be determined by chance—as by cutting the cards, obtaining the first knave, etc.

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2. Previous to the deal the youngest hand shuffles, and the eldest hand cuts.

3. The stake must be placed on the first card previous to the second round, and allowed to remain till the round is completed and the dealer exposes his cards.

4. In case of a misdeal, the stakes must be withdrawn and the cards dealt over again.

5. All ties pay to the dealer, except in the case of a "natural" being declared previous to the dealer obtaining his second card. Then the holder of the "natural" is entitled to receive double stakes immediately, before another card is played.

6. The holder of a "natural," after the first round, is entitled to the deal.

7. The dealer is at any time allowed to sell, and any player to purchase, the deal. The dealer may also pass the deal to any one desirous of having it.

8. The "natural" must consist only of an ace and a tenth card *dealt in the first two rounds*. In the case of double or treble hands, an ace and a tenth card form "acquired" and not "natural" vingt-uns, and receive or pay only single stakes.

(The *brulet*, or drawing a card from top and bottom, is rarely played in the United States.—EDITOR.)

9. The player who over-draws must immediately declare the fact, and pay his stake to the dealer.

10. In taking brulet the dealer is compelled to retain those two cards, but he may add to them if he wishes after all the players are served.

11. No stake can be withdrawn, added to, or lessened, after it has been once laid on the card; but it must be allowed to remain till the dealer declares he stands.

12. No stake higher than that agreed to at the commencement of the game is allowed.

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If either ace, king, queen, or knave, happens to be the turned-up trump, the dealer takes whatever is deposited on that head; but when Pope is turned up, the dealer is entitled both to that and the game, besides a stake for every card dealt to each player. Unless the game is determined by Pope being turned up, the eldest hand begins by playing out as many cards as possible; first the stops, then Pope if he has it, and afterwards the lowest card of his longest suit, particularly an ace, for that never can be led through; the other players are to follow when they can, in sequence of the same suit, till a stop occurs, and the party having the said stop, thereby becomes eldest-hand, and is to lead accordingly, and so on, until some person parts with all his cards, by which he wins the pool (game,) and becomes entitled besides to a stake for every card not played by the others, except from any one holding Pope, which excuses him from paying; but if Pope has been played, then the party having held it is not excused, having already received the stakes for that card.

King and queen form what is denominated matrimony, queen and knave make intrigue, when in the same hand; but neither they, nor ace, king, queen, knave, or pope, entitle the holder to the stakes deposited thereon, unless played out, and no claim can be allowed after the board is dressed for the succeeding deal; but in all such cases the stakes are to remain for future determination.

This game only requires a little attention to recollect what stops have been made in the course of the same; as for instance, if a player begins by laying down the eight of clubs, then the seven in another hand forms a stop, whenever that suit is led from any lower card, or the holder when eldest may safely lay it down in order to clear his hand.

VINGT-UN.

VINGT-UN, or twenty-one, is very similar to Quinze, and may be played by two or more people. It is essentially a family game, and when played as such, the stakes are usually represented by counters, which may be of any value; say, sixpence the dozen, or more. It is common to limit the

stakes to be laid to a dozen of counters, or the amount in money which they represent. As the deal is advantageous, and often continues long with the same person, it is usual to determine it at the commencement by the first ace turned up, or any other mode that may be agreed upon.

The deal is retained by the person who commences, until a natural vingt-un occurs, when it passes to the next in rotation.* (The old mode of play, however, is, that in the case of a natural vingt-un the deal passes to the holder, and many still adhere to this custom. This item of the game must, therefore, be regulated by the custom of the table, or be previously agreed.) The pony or youngest hand should collect the cards that have been played, and shuffle them together ready for the dealer against the period when he shall have distributed the whole pack.

The dealer begins by giving two cards, one at a time, face downwards, to each player, including himself. After the first card has been dealt round, each places his stake upon it (which may, if he chooses, be as low as a single counter,) and then receives the second card; but the dealer, upon the stakes being all laid, and before proceeding with the deal, looks at his own card, and if he thinks proper (having perhaps an ace, ten, or court card,) he may double the stakes, which he announces by crying 'double.' He then distributes a second card to each, and lastly to himself. Should he chance to have a natural vingt-un, he declares it at once, before any more cards are dealt, and collects the stakes (which, by a vingt-un, are doubled,) but should he have drawn less than 21, the game proceeds thus:—The dealer enquires of each player in rotation, beginning with the eldest hand on the left, whether he stands, or wishes for another card, which, if required, must be given from off the top (face upwards) of the pack, and afterwards another, or more, if requested, till the points of the additional card or cards, added to those dealt, exceed or make 21 exactly, or such a number less than 21, as the player may choose to stand upon; but when the points exceed 21, the player is technically said to have overdrawn, and his cards are to be thrown up forthwith, and the stake laid on them paid to the dealer. When the dealer has gone the

* Should a natural vingt-un occur in the first round it does not put out, the dealer being allowed a *misericorde*.

54/112

round of the table in this manner, he turns up his own cards to the view of the company, and should he have any number of points, between, say from 17 to 20, he usually "stands," that is, pits his cards against the other players. Those under his number, as well as ties,* pay; those above it receive. If the dealer should have only 14 or 15 points in his first hand, the chances would be against him, were he to stand on so small a number. He would therefore draw another card, and should this be a very low one (an ace or a deuce,) and he have reason to suppose, by the extra cards dealt round, that he had to contest high numbers, he would draw again, and if he obtained 19 or 20 points would then probably win on more than he loses; the average of chances being in his favor; if by drawing he should happen to make up 21, he would receive double from all, excepting from the ties and those who had already thrown up; if more than 21, he would have to pay all who stand, paying the vingt-uns double.

Should either the dealer or a player happen to turn up two cards of the same denomination, for instance, two aces, deuces, or any other number, or two kings, two queens, &c., he would have the choice of going on both, and should the next card he draws be a triplicate, he may go on all three. If the cards happen to be aces, which count either as 1 or 11, at the option of the player, and if by great luck he should successively draw three tens, or Court cards, thus making three natural vingt-uns, he would obtain double stakes upon each, therefore six times as much as the stakes placed on the various hands, and should he, on laying his first card, have cried "double," the stakes payable, would, in such case, be twice doubled, therefore upon the three cards twelve-fold. This is an extreme case, cited merely to show the nature of the game. It commonly happens, however, that when either dealer or player "goes" on several cards, he loses on one or more, and thus neutralizes his gains. Players, as already intimated, have the same right of "going" on several cards, as the dealer.

When any player has a vingt-un, and the dealer not, then the player wins double stakes from him; in other cases, except a natural vingt-un happens, the dealer pays single stakes

* Ties are the principal advantage of the dealer.

to all whose numbers under 21 are higher than his own, and receives from those who have lower numbers; players who have similar numbers to the dealer pay; and when the dealer draws more than 21, he overdraws, and has to pay to all who have not thrown up, as already stated.

Twenty-one, whensoever dealt in the first two cards, is styled a Natural Vingt-un, and should be declared immediately. Hoyle says that this entitles the possessor to the deal, besides double stakes from all the players, unless there shall be more than one natural vingt-un, in which case the younger hand or hands so having the same, are exempted from paying to the eldest. But this rule, like that mentioned at page 318, is nearly obsolete. It is not now customary to allow any except the dealer to take double stakes from the company, in respect to his natural vingt-un.

One of the first thoughts of the dealer, after the cards have been cut, should be to look for BRULET, which is a natural vingt-un formed by the bottom and top card, when they happen to be an ace and tenth card. The card or cards looked at must be thrown out, and mixed with those collected by the pony. Brulet either clears the board of the stakes laid, (usually one or two counters levied on each player, at the commencement of every game, and collected into a tray,) or takes the amount of the limit (perhaps 6*d.*) from each, as may be agreed.

The deal, it should be observed, may be sold to the best bidder, and, as it is undoubtedly of some advantage, a buyer will generally be found. But should a timid player object to the deal, and no buyer be found, he may decline it, and so let it pass to the next.

N. B. An ace, as already intimated, may be reckoned either as 11 or 1: every court-card is counted as 10, and the rest of the pack according to their points.

The odds of this game merely depend upon the average quantity of cards likely to come under or exceed 21; for example, if those in hand make 14 exactly, it is 7 to 6 that the one next drawn does not make the number of points above 21, but if the points be 15, it is 7 to 6 against that hand; yet it would not therefore always be prudent to stand at 15, for as the ace may be calculated both ways, it is rather above an even bet that the adversary's two first cards amount to more

than 14. A natural vingt-un may be expected once in 7 coups when two, and twice in 7, when four people play, and so on according to the number of players.

LANSQUENET.

This game may be played by almost any number of people, although only one pack of cards is used at a time, during each deal.* The dealer, who has rather an advantage, begins by shuffling the cards, and having them cut by any other person of the party; after which he deals out two cards on his left-hand, turning them up; then one for himself, and a fourth, which he places in the middle of the table for the company, called the *rejouissance* card. Upon this card any, or all of the company, except the dealer, may put their money, either a limited or unlimited sum, as may be agreed on, which the dealer is obliged to answer, by staking a sum equal to the whole that is put upon it by different persons. He continues dealing, and turning the cards upwards, one by one, till two of a sort appear; for instance, two aces, two deuces, &c. which in order to separate, and that no person may mistake for single cards, he places on each side of his own card; and as often as two, three, or the fourth card of a sort comes up, he always places them, as before said, on each side of his own. Any single card the company has a right to take and put their money upon, unless the dealer's own card happens to be double, which often occurs by this card being the same as one of the two cards which he first of all dealt out on his left-hand. Thus he continues dealing till he brings either their cards, or his own. As long as his own card remains undrawn he wins; and whichever card comes up first, loses. If he draws or deals out the two cards on his left, which are called the hand-cards, before his own, he is entitled to deal again; the advantage of which is no other, than being exempted from losing when he draws a similar card to his own, immediately after he has turned up one for himself.

* As the game is now played in France, four, and even more, packs of cards are mixed together.

Hoyle's Games

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Edmond Hoyle.

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Two-Hand Hearts

Each player begins with 13 cards, dealt from a full pack. The remainder of the pack is placed face down on the table between them, and the winner of each trick draws a card from the top of the stock, the loser drawing the next card, until the stock is exhausted.

Discard Hearts

Black-Jack, or Black-Lady

In this variety, the J of spades counts as 10 hearts; or if the lady is the card selected, the queen of spades is worth 13 hearts.

Each player at the table discards three cards, face down, and then picks up the three that have been discarded by the player on his right. As each must discard first, each knows three cards in the hand on his left, when it comes to the play.

The jack or lady ranks in its natural place among the spades, and if spades are led, it must be regarded as a spade; but the moment any other suit is led, in which the player cannot follow suit, the jack or lady may be discarded, just as one would discard hearts. It can be played on hearts if the player has no hearts, as it ranks below the deuce of hearts if hearts are led.

Progressive Hearts

This is a game for large parties. At the end of each hand the two ladies at the same table compare, and the one with the lesser number of hearts goes to the next higher table and gets a punch mark on her score card.

THREE-CARD MONTE

THE banker takes three cards, two red and one black; usually the red aces and the ace of spades. The cards are slightly bent lengthwise, so as to be easily picked up by the ends. They are placed on the table face down and separated. The one that is the black ace is distinctly shown, and then the banker shifts the cards about face down in such a manner as to confuse the players so that they cannot tell which is the black ace when the cards come to rest again. For this purpose a few skilful passes are usually sufficient.

If the banker pays 2 for 1, as he should do, it is a perfectly fair game; but if he pays even money only, the player is betting 2 to 1 against himself.

VINGT-ET-UN

Or Twenty-One

ANY number of players; 52 cards, dealt round for the first ace to take the bank. A betting limit is usually agreed upon. Each player except the banker puts up a certain amount in front of him, and the banker then deals to each a card, face down, and one to himself. The players look at this first card and increase their bets if they wish. The banker, after seeing his card, can call upon all the players to double the amount of their bets. If any refuse, he takes what they have already put up. A second card is then dealt to every player at the table, including the banker, also face down.

The object is to get 21, or as near to it as possible without passing it. The K Q J count 10 each, and the ace may be reckoned as 1 or as 11, at the option of the player. Other cards retain their pip value.

If any player finds exactly 21 in the two cards dealt to him, he shows it at once, and claims a "natural." The banker must then pay him double what he has staked, unless he also holds a natural, when it is a stand-off, and is called "paying in cards." If the banker is the only one that holds a natural, all the players pay him twice what they have staked.

If no one has a natural, the banker asks each player in turn if he wants another card or cards. If the player stands on the two cards first dealt him, he says so. If he draws cards, they are given to him one at a time, face up. If the first is not enough, he may take a second, and if that is not enough, another; but if the total pips on the two cards he has face down and those face up go beyond 21, he is "burst," and must pass his stake over to the banker. If he does not burst, he knocks on the table to show that he has drawn as far as he wants to. It is usual to stand at 17; but to draw with 16 or less, not forgetting that an ace may be 1 or 11, at pleasure.

After each player in turn is disposed of in this way, the banker turns his two cards face up, so that all may see what he had and what he draws. If he bursts, he must pay all who can show that they have not passed 21. If he stands at any number, he must pay all who are nearer 21 than he, and he wins from all who are not so many as he. Ties are a stand-off.

Twenty-one made by drawing is not a natural.

If the first two cards dealt to any player but the banker are a pair, he may divide them if he likes, and draw to each, but he must bet an equal amount on each.

It is usual to pass the bank to any player showing a natural when the dealer has none to offset it. Sometimes it is agreed to let each be the banker for a certain number of deals, or until the banker has won or lost a fixed amount. The modern practice is for each player in turn to the left to deal one hand, and be the banker.

Macao

In this variation of vingt-et-un, the K Q J and 10 count for nothing, and 9 is the number to be approached, instead of 21. There are three naturals: Any player holding 9 in the first two cards dealt him, wins 3 times his stake. If he shows 8, he wins double. If he shows 7, he wins even money. Ties stand off. If not naturals are shown, the players draw until they stand or burst.

Quinze

This is vingt-et-un for two players, and 15 is a natural, instead of 21. The K Q J are worth 10 each. The play is for an agreed and equal amount each deal. The dealer gives one card to his adversary and one to himself, and the non-dealer may stand upon his card or draw to it. The dealer stands or draws in his turn, and one nearer 15 wins. If it is a tie, or if both pass 15, the stakes are doubled and the deal passes. Each deals in turn, and there are no naturals.

HOYLE'S GAMES MODERNIZED

EDITED BY

PROFESSOR HOFFMANN

New Edition (Reset)

THOROUGHLY REVISED TO 1909

With Chapters on AUCTION and "LILLY" BRIDGE (1913)
and Three other New Games

BY

ERNEST BERGHOLT

And with New Chapters on ROULETTE and TRENTE ET QUARANTE

BY CAPTAIN BROWNING
("Slambo" of *The Westminster Gazette*)

WITH DIAGRAMS

LONDON
GEORGE ROUTLEDGE AND SONS, LIMITED
NEW YORK: E. P. DUTTON & CO.
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In some circles, after the cards are cut, the dealer is allowed to look at the bottom card, and if such card prove to be an ace or tenth card, he also looks at the top card. If the two form a "natural," he is entitled to receive double the *minimum* stake all round.

This privilege is known as the *brûlet*, from the fact that it is dependent on the nature of the bottom card, which is always, in the French phrase, *brûlé* (literally, "burnt") *i.e.* thrown aside when reached in the course of the deal, and not dealt to any player.

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staking, according to the nature of his hand, either the *maximum* or the *minimum*, never an intermediate amount. The reason of this is obvious. With certain cards,* say, eight, nine, ten (or a tenth card), or ace, the holder has the chances in his favour, as a tenth card, of which there are sixteen, will give him a good hand. With any other as his first card, the chances are against him, and he should therefore risk as little as possible.

The dealer also looks at his card, and, if he thinks fit, says, "I double you," or simply "Double," the effect of his so doing being that he will receive or pay, as the case may be, *double* the stakes offered by the punters. In deciding whether to double or not, he has two points to consider, viz. (1) the fact of himself holding an exceptionally good card, and (2) the absence or rarity of high stakes among the punters, indicating that their cards are not such as they feel safe in backing freely. It must, however, be remembered that the dealer has the important advantage of receiving from ties, also from all players who overdraw. These two points make a considerable percentage in his favour. With an ace, tenth card, nine, or eight, he should *always* double; and the weighty authority of "Cavendish" is in favour of his doubling with a seven, or even a lower card. In these latter cases, however, we think the amounts of the stakes should be taken into consideration, as affording some gauge of the probable strength of the enemy.

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The object of the game is, as we have said, to make twenty-one, and this may be made either by the conjunction of an ace and a court or other tenth card, called a "natural," or by three or more cards, say a five, six and ten; ace, five, seven, eight; or ace, seven, three.

The ace is, as will readily be perceived, the most valuable card; not merely from the fact that there are sixteen cards out of the fifty-two that will form a "natural" with it, but from the fact that (counting as eleven or one at pleasure), it gives the holder a double chance of making a winning number.

The stakes having been made, and the dealer having decided whether to "double" or not (in the latter case, silence is a sufficient negative), he deals a second round of cards, still face downwards.

Each player again looks at his cards. If those of the dealer form a "natural," he turns them up, and receives from each player double the amount of his stake, or, if he has "doubled," quadruple.* (The proportionate increase in the latter case will henceforth be taken for granted.) What cards the other players may hold is, in this case immaterial, save in the event of some one of them holding a second "natural," in which case the two cancel, neither paying nor receiving.

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The New

HOYLE

Standard Games

INCLUDING

Auction Bridge, Contract Bridge, Bridge Keno, Hachi-Hachi, Whist and All Modern Card Games; also, Chess, Checkers, Dominoes and Mah Jong

edited by

PAUL H. SEYMOUR, M.S.

Bridge Editor of The Chicago Daily News; Broadcaster over W. M. A. Q.; President of The Chicago Bridge Teachers' Association; Author of "Auction Bridge for Beginners," "Highlights on Auction Bridge," "Auction Bridge Simplified," "Simplified Bridge—Auction and Contract."

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PUBLISHER'S NOTE

This Famous Book has been greatly enlarged and carefully revised by Mr. Seymour to meet the needs of up-to-date card playing.

Contract Bridge in all its phases is fully covered.

We hope that this book, as a silent partner, will contribute much to the efficiency and to the peace of mind of the reader.

and more scientific game of Royal Cassino is played by using packs containing eleven and twelve spots of each suit. This makes Jacks thirteens, Queens fourteens, Kings fifteens, and Aces ones or sixteens. The number of combinations possible is thus greatly increased and interest added.

ROYAL DRAW CASSINO

The same as Royal Cassino, except that after the first four cards are dealt to players and board, remainder of the pack is placed face downward on the table, and each player, after playing a card from his hand, draws the top card from the pack, thus restoring the number of cards in his hand to four. This is continued until pack is exhausted, when hands are played out, and count made in the regular manner. If a player fails to draw in proper turn he cannot correct the error until his next turn to draw, when he must draw two cards.

SPADE CASSINO

The same as Royal Draw Cassino, except that each card of Spade suit counts 1 point for game. Ace, Jack and deuce of Spades count 2 each—1 point as Ace and Jack and Little Cassino respectively, and 1 each as a Spade. Sixty-one points constitute a game. A cribbage board is used for scoring, and points are scored as made. The only thing which remains to be counted at end of play, therefore, is cards.

VINGT-UN (Twenty-one)

Vingt-Un, or Twenty-One, may be played by two or more people. It is essentially a family game, and when played as such the stakes are usually represented by counters, which

may be of any value. It is common to limit the stakes to be laid to ten or twelve counters. As the deal is advantageous and often continues long with the same person, it is usual to determine it at the commencement by the first Ace turned up, or any other mode that may be agreed upon.

The deal usually passes to the left, each player dealing one round in turn. Sometimes, however, it is retained by the person who commences until a natural twenty-one occurs, when it passes to the next in rotation. (The old mode of play, however, is that in the case of a natural twenty-one the deal passes to the holder, and many still adhere to this custom. This item of the game must, therefore, be regulated by the custom of the table, or be previously agreed upon.) The pony, or youngest hand, should collect the cards that have been played, and shuffle them together ready for the dealer against the period when he shall have distributed the whole pack.

The object of the game is to make twenty-one with the cards received. An Ace may be counted 1 or 11, each face card counts 10 and lower cards count their numerical value.

The dealer begins by giving one card, face downward, to each player, including himself. After the first card has been dealt round, each places his stake upon it (which may, if he chooses, be as low as a single counter), and the dealer, upon the stakes being all laid, and before proceeding with the deal, looks at his own card, and if he thinks proper (having perhaps an Ace, ten, or face card), he may double the stakes, which he announces by crying "Double."

He then distributes a second card to each, and lastly to himself. Should he chance to have a natural twenty-one he declares it at once, before any more cards are dealt, and

collects the stakes (which, by a twenty-one, are doubled); but should he have drawn less than twenty-one, the game proceed thus: The dealer inquires of each player in rotation, beginning with the eldest hand on the left, whether he stands, or wishes another card, which, if required, must be given from the top (face upward) of the pack, and afterwards another, or more, if requested, till the points of the additional card or cards, added to those dealt, exceed or make twenty-one exactly, or such a number less than twenty-one as the player may choose to stand upon; but when the points exceed twenty-one, the player is said to have overdrawn, and his cards are to be thrown up forthwith, and the stake laid on them paid to the dealer. When the deal has gone around the table in this manner, the dealer turns up his own cards to the view of the company, and should he have any number of points between, say, from 17 to 20, he usually "stands," that is, pits his cards against the other players. Those under his number, as well as ties, pay; those above it receive. (Ties are the principal advantage of the dealer.) If the dealer should have only 14 or 15 points in his first hand, the chances would be against him were he to stand on so small a number. He would, therefore, draw another card, and should this be a very low one (an Ace or a deuce) and he have reason to suppose, by the extra cards dealt round, that he had to contest high numbers, he would draw again, and if he obtained 19 or 20 points would then probably win on more than he loses, the average of chances being in his favor; if by drawing he should happen to make up twenty-one, he would receive double from all, except from the ties and those who had already thrown up; if more than twenty-one, he would have to pay all who stand, paying the twenty-ones double.

Should either the dealer or a player happen to turn up

two cards of the same denomination, for instance, two Aces, deuces, or any other number, or two Kings, two Queens, etc., he would have the choice of going on both, and should the next card he draws be a triplicate, he may go on all three. If the cards happen to be Aces, which count either as 1 or 11, at the option of the player, and if by great luck he should then successively draw three tens or face cards, thus making three natural twenty-ones, he would obtain double stakes upon each, therefore six times as much as the stakes placed on the various hands, and should he, on laying his first card, have cried "double," the stakes payable would, in such case, be twice doubled, therefore, upon the three cards twelve-fold. This is an extreme case, cited merely to show the nature of the game. It commonly happens, however, that when either dealer or player "goes" on several cards, he loses on one or more, and thus neutralizes his gains. Players, as already intimated, have the same right of "going" on several cards as the dealer.

When any player has a twenty-one, and the dealer not, then the player wins double stakes from him; in other cases, except when a natural twenty-one happens, the dealer pays single stakes to all whose numbers under twenty-one are higher than his own, and receives from those who have lower numbers; players who have similar numbers to the dealer pay; and when the dealer draws more than twenty-one, he overdraws, and has to pay all who have not thrown up.

Twenty-one, whenever dealt in the first two cards, is styled a natural twenty-one, and should be declared immediately.

One of the first thoughts of the dealer, after the cards have been cut, should be to look for Brulet, which is a

natural twenty-one formed by the bottom and top card, when they happen to be an Ace and a "ten" card. The card or cards looked at must be thrown out, and mixed with those collected by the pony. Brulet either clears the board of the stakes laid (usually one or two counters levied on each player, at the commencement of every game, and collected into a tray) or takes the amount of the limit from each, as may be agreed.

The odds of this game merely depend upon the average quantity of cards likely to come under or exceed 21; for example, if those in hand make 14 exactly, it is 7 to 6 that the one next drawn does not make the number of points above 21, but if the points be 15, it is 7 to 6 against that hand; yet it would not, therefore, always be prudent to stand at 15, for as the Ace may be calculated both ways, it is rather above an even bet that the adversary's two first cards amount to more than 14. A natural twenty-one may be expected once in 7 deals when two, and twice in 7 when four, people play, and so on according to the number of players.

MACAO

A variation of Twenty-One, only one card being dealt. Tens and face cards do not count; Aces count one. Nine is number to be reached instead of 21. A player receiving nine in the first deal is paid three times amount of his wager; an eight, twice the amount; or a seven the amount he has staked. The dealer, if he receives a nine, eight or seven on the deal, is paid by each player three times, twice, or once the amount of such player's stake. Otherwise, the game is played on same principle as Twenty-One.

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BY

THE UNITED STATES PLAYING CARD COMPANY

AT CINCINNATI, OHIO, U. S. A.

Canadian Factories, Windsor, Ontario

Black Jack or Vingt-et-un

(TWENTY AND ONE)

The Pack.—Full pack, 52 cards.

Number of Players.—Any number may play.

Rank of Cards.—Cards have no relative rank, but the counting value is as follows: K's, Q's and J's, 10 each; Aces, 11 or 1; others are counted at pip value, 9's 9; 8's 8, etc.

Stakes and Counters.—Each player begins with an equal number of counters. A limit to the betting is decided upon before play.

Cutting.—Any player deals cards, one at a time, around to the left. Player first receiving an ace is dealer and banker for the first hand, after which the deal passes to the left; or he may be the banker until some other player turns up a natural, the banker having none to offset it.

There are various ways of changing the dealers, as, for instance, allowing dealer to deal a certain number of hands, or until he has won or lost a certain amount, or until pack is exhausted, or until some player holds a natural, and takes the bank. Usually, however, deal passes to the left, each player dealing one round, in turn.

Betting Before the Deal.—Before cards are dealt, each player, except the dealer, makes a bet, placing the counters or chips before him. This bet must not exceed the limit, and in some localities a fixed amount is set for this bet, such as one or two chips. (In one variation, player is allowed to look at the first card dealt him before staking. Another allows a player, when he gets a pair in the deal, to separate the two cards and place a stake upon each one.) Dealer makes no bet, but is the banker, who takes and plays all player's bets.

Objects of the Game.—To hold cards, the collective pip value of which most nearly approaches 21, without passing that number.

Dealing.—Dealer gives each player two cards, face down, one at a time, in rotation to the left. Deal passes to the left.

Drawing and Settling of Bets.—Each player examines cards dealt him. If dealer's cards consist of an ace and ten (or court card), it is called a "Natural," and each player (unless he also has a natural) loses twice the amount he has staked. Should a player have a natural and dealer none, dealer must pay player double. (In some localities, player holding a natural is allowed to take all stakes on table, but this custom is not general.)

If no player receives a natural (or after players, other than dealer, have been paid for naturals held), each player in turn may ask for a card so as to bring the pip value of his hand nearer to 21. Drawing begins with eldest hand, and he may draw one card at a time until he is satisfied, or until the pip value of his hand exceeds 21. In latter case he must abandon his hand and pay his stake to dealer. Next player to the left draws in same manner, and so on until each player is either satisfied or overdrawn. The dealer then turns his two cards face up, and draws. If dealer overdraws, he pays each player who has not overdrawn the amount of that player's stake. If dealer has 21 or less players having same amount are tied, and neither win nor lose; those holding less lose their stake, while those holding more than dealer, but not more than 21, win the amount of their stakes.

A player having two Aces can separate them, making a bet of each. For Naturals the banker must pay double for each Natural if he does not also draw a Natural, if he does they are tied, neither winning nor losing.

Splitting.—When splitting a pair the player finishes drawing to the first card before drawing to the second.

Next deal is made with remainder of pack left over from previous deal. When entire pack is dealt out, all discards are gathered and shuffled, and deal continued.

MACAO.

A variation of Vingt-et-un, only one card being dealt. Tens and court cards do not count; aces count one. Nine is number to be reached instead of 21. A player receiving nine in the first deal, is paid three times amount of his wager; an eight twice the amount; or a seven, the amount he has staked. The dealer, if he receives a nine, eight or seven on the deal, is paid by each player three times, twice, or once the amount of such player's stake. Otherwise, the game is played on same principle as Vingt-et-un.

FARMER.

Use full pack, with the four eights and the sixes of diamonds, clubs and spades discarded. Spot cards count at their pip values, court cards 10, and aces 1. Each player places one chip in center of table, forming the Farm (or pool). This is sold to highest bidder, who must deposit in the Farm as many chips as he bid. He then becomes dealer and banker. One card is dealt to each player, and each must draw one card, and may draw more, if desired, as in Vingt-et-un, the object being, however, to reach 16 points, instead of 21. If a player overdraws, he does not announce it until the hands are exposed. Any player having exactly 16, wins the Farm and all it contains. If two or more players have 16, the one holding the six of hearts wins; or, if no one has this card, the 16 made with fewest cards wins. If this is a tie, eldest hand wins. If no one has exactly 16, the Farmer still remains in possession of the Farm, and thus holds it, deal after deal, until some one wins it by holding exactly 16.

Whether Farm changes hands or not, after hands are exposed, all who have overdrawn pay dealer one chip for each pip they hold over 16. These chips are the Farmer's own property.

The

OFFICIAL RULES

of CARD GAMES

HOYLE UP-TO-DATE

ALBERT H. MORREHEAD, Editor

Publisher's 47th Edition

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BY
THE UNITED STATES PLAYING CARD COMPANY
AT CINCINNATI, OHIO, U. S. A.

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Black Jack

(Twenty-One or Vingt-et-Un)

Black Jack traditionally rivals Poker for popularity in the United States Army, and is one of the most widely played games in homes and clubs. It has two main forms: *With a permament bank*, the same player always deals and all bets are placed against this player; *with a changing bank*, every player in the game has a chance to be dealer. The latter form is the one most often played in homes.

BLACK JACK WITH A PERMANENT BANK

Number of Players—As many as can sit at the table; but usually seats are provided for no more than seven or eight players besides the dealer.

The Pack—104 cards (two 52-card packs shuffled together). In addition, the dealer uses a joker or blank card which is never dealt, but is faced up at the bottom of the pack to mark the location of the last of the shuffled cards.

The Shuffle and Cut—Dealer and any other player who wishes to may shuffle portions of the pack until all cards have been shuffled and combined. Any player may cut the pack. The extra card is placed face up at the bottom.

Betting—Before the deal begins, each player places a bet, in chips, in front of him on the table; usually minimum and maximum limits are placed upon betting, so that, for example, no player may bet less than one chip nor more than ten.

The Deal—When all players have placed their bets, dealer gives one card face up to each other player in rotation; then one card face down to himself; then another card face up to each player including himself. Thus each player except the dealer receives two cards face up, and dealer receives one card face up and one card face down.

Object of the Game—Counting any ace as 1 or 11, as he wishes, any face card as 10, and any other card at its pip value, each player attempts to get a count of 21, or as near to 21 as possible, without going over 21.

Naturals—If a player's first two cards are an ace and a face card or ten, giving him a count of 21 in two cards, he has a *natural* or *black jack*. If any player has a natural and dealer does not have a natural, dealer immediately pays that player one and one-half times the amount of his bet. If dealer has a natural, he immediately collects the bets of all players who do not have naturals, but no player need pay any more than he bet originally. If dealer and any other player both have naturals, the bet of that player is a stand-off (he takes back his chips, and neither pays nor collects).

If dealer's face-up card is a ten, face-card or ace, he may look at his face-down card to see if he has a natural; if his face-up card is anything else, he may not look at his face-down card until his turn comes to draw.

Drawing—If dealer did not have a natural, when he has settled all bets involving naturals he turns to the player nearest his left. That player may *stand* on the two cards originally dealt him, or may require the dealer to give him additional cards, one at a time, until after receiving any such card he stands on the total already dealt to him if it is 21 or under; or *busts* (goes over 21), in which case he immediately pays the amount of his bet to the dealer. Dealer then turns to the next player in turn to his left and serves him in the same manner.

When dealer has thus served every player, he turns up his own face-down card. If his total is 17 or more, he must stand. If his total is 16 or under, he must take a card and must continue to take cards until his total is 17 or more, at which point he must stand. If dealer has an ace, and counting it as 11 would bring his total to 17 or more (but not over 21), he must count the ace as 11 and stand.

Settlement—A bet once paid and collected is never returned. If dealer goes over 21, he pays to each player who has stood the amount of that player's bet. If dealer stands at 21 or less, he pays the bet of any player having a higher total; collects the bet of any player having a lower total; and is at a stand-off with any player having the same total.

Reshuffling—As each player's bet is settled, dealer gathers in that player's cards and places them face up on the bottom of the pack. Dealer continues to use the originally shuffled pack until he comes to the face-up blank card, which signifies the end of the shuffled cards. At this point he interrupts the deal, shuffles all cards not in play, has them cut by any player or players, again places the blank card face up on the bottom, and continues the deal. Before any deal, if the dealer does not think there are enough cards to go around in the next deal, he may gather up all cards for a new shuffle and cut.

Splitting Pairs—If a player's two first cards are of the same denomination—as, two jacks, or two sixes—he may choose to treat them as two separate hands. The amount of his original bet then goes on one of the cards, and he must place an equal amount as a bet on the other card. When this player's turn to draw comes, dealer first gives him one card face up to each. The player may then require dealer to give an additional card or cards to either hand, in whatever order he wishes, until he has gone over or stood on both hands. The two hands are treated separately, dealer settling with each on its own merits.

Irregularities—Since all players' cards are dealt face up, there is no penalty for any irregularity, but an irregularity must be corrected if discovered before the bet has been settled; after the bet has been settled, there can be no correction. If dealer has a natural, but fails to announce it before dealing an additional

card to any player, his hand constitutes a count of 21 but can be tied by the hand of any other player whose total is 21 in three or more cards.

BLACK JACK WITH A CHANGING BANK

Number of Players—Two to fourteen.

The Pack—52 cards.

Values of Cards—Ace 1 or 11 (at holder's option); any face card, 10; any other card, its pip value.

Determining the First Banker—Any player picks up the pack and deals the cards in rotation, face up, until a black jack (spades or clubs) falls to any player. That player is the first dealer.

The Shuffle and Cut—Dealer shuffles the pack and any other player may cut. Dealer then turns up the top card of the pack, shows it to all players, and places it, face up, at the bottom of the pack; this is called *burning* a card, and when that card is reached in the deal there must be a new shuffle and cut before dealing continues, in the manner described on page 232.

First Round of Dealing—Dealer gives one card face down to each player in rotation, including himself.

Betting—After looking at his card, each player places a bet, which may not be less than one chip nor more than the betting limit established for the game, usually not more than three chips. After all players other than the dealer have bet, dealer may require that all bets be doubled. Any player may then redouble his bet. *Example.* A player bets two chips. Dealer doubles, requiring that player to put up two more chips. The player redoubles, putting up four more chips and making his total bet eight chips.

Completion of the Deal—Dealer then gives one card face up to each player in rotation, including himself.

Naturals—If dealer has a natural (ace, and face card or ten) every player pays him double the amount of his bet, except that another player having a natural pays the dealer only the amount of his bet. If any other player has a natural and the dealer has not, the dealer pays that player double the amount of his bet.

Drawing Cards—If the dealer does not have a natural, he starts with the player nearest his left and gives each player in turn as many cards as that player requests, one at a time, until that player goes over 21 and pays, or stands.

When all players have gone over or have stood, dealer turns up his face-down card and may draw cards until he wishes to stand. Dealer is not bound by rules to stand on or draw to any total. If dealer goes over 21, he pays all players who have stood; if dealer stands on a total of 21 or less, he pays all players who stood with a higher total, and collects from all players who stood with the same or a lower total—"ties pay the dealer."

97/112

A player against dealer may split a pair (see page 232).

Bonus Payments—Any player who forms one of the following combinations collects immediately from the dealer, and cannot later lose his bet even if the dealer has a higher total:

If a player has five cards and his total is 21 or under, he collects double his bet; with six cards totaling 21 or under, four times his bet; and so on, doubling for each additional card.

A player who makes 21 with three sevens receives triple the amount of his bet.

A player who makes 21 with eight, seven and six receives double the amount of his bet.

The dealer does not collect more than the amount of the players' bets for making any one of these combinations, nor does he necessarily win if he has five or more cards with a total under 21.

Changing the Bank—Dealer continues as dealer until another player is dealt a natural and dealer has no natural; in this case, after all bets in the current deal have been settled, the player who had the natural becomes the next dealer. If two or more players have naturals and the dealer has none, the one nearest the dealer's left becomes the next dealer. A player entitled to deal may, if he wishes, sell the privilege to another player.

Irregularities—If dealer fails to burn a card, he must, on demand, shuffle the remainder of the pack and burn a card before continuing the deal.

If dealer fails to give any player a card on the first round of dealing, he must on demand supply that player from the top of the pack unless attention is called to the error after dealer begins the second round of dealing, in which case the player lacking a card stays out for that deal.

If dealer gives any player his first card face up, that player must still make his bet, but dealer must give him his next card face down. If dealer fails to give him his next card face down, the player may withdraw his bet and drop out for that deal.

Any player who stands must expose his face-down card as soon as dealer has stood or gone over. If that player has in fact a total of more than 21, he must pay dealer double the amount of his bet even if dealer has gone over.

If the dealer gives a player two cards on the first round of dealing, that player may choose which card to keep and which to discard; or may keep both cards, play two hands, and place a bet on each. He may not, however, play both cards as belonging to the same hand.

If dealer gives a player two cards on the second round of dealing, the player may choose which to keep.

If a card is found faced in the pack, the player to whom it would fall may accept it or refuse it.

If dealer gives a card to a player who did not ask for it, that player may keep the card if he chooses, or may refuse it, in which case it is a discard and is placed face up at the bottom of the pack. The next player in turn may not claim it.

Scarne's

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John Scarne

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CHAPTER 16

Banking Card Games

Properly speaking, so-called banking games are games in which the gambling establishment or one player is continually opposed to all other players. There are two distinct classes of banking games: casino games and private games. Casino games are those that require special apparatus, have a mathematical advantage for the bank, and as a rule are played mostly in gambling casinos and sporting clubs. Among these games the best known are probably Black Jack Casino Style, Chemin de Fer, Baccarat–Chemin de Fer, Baccarat, Scarney Baccarat, Trente et Quarante, Monte, and Faro. Private banking games are those that require no apparatus but a pack of cards and some checks (chips) or money. Among these we find Black Jack, Farmer, Red Dog, Banker and Broker, Yablon, and Slogger. Some of these banking or showdown games are good for sociable group participation. Stakes need not be high for full enjoyment of such games. Many people have an excellent time playing for the fun of it with chips, matchsticks, or tokens—the main satisfaction coming from being the winner.

BLACK JACK, B.J., OR TWENTY-ONE

It is a matter of record that this game is the most widely played banking card game in the world. Black Jack is played in every casino, private card room, and gambling club from California to New England and from New York to Panama. Every major casino in Nevada, Puerto Rico, Netherlands Antilles, Grand Bahamas, England, North Africa, Macao, Yugoslavia, France, Italy, Turkey, Monte Carlo, and elsewhere harbors at least five Black Jack tables.

There is almost as tense a scholarly dispute over the origin of the game as there is over Coon Can. Italy and France have claimed it as their own, the French alleging a blood relationship with their Ferme and Chemin de Fer (Shimmy), the Italians insisting that it is a vulgarization of their Seven and a Half. These games are obviously similar, structurally. To identify who first played Black Jack, and when and where, is obviously outside the purview of the present work; I should as soon undertake to arbitrate when and where the first blackjack was bounced off the first human skull.

The etymology of the game seems to have escaped the attention of the professors, although it might be a rewarding inquiry. *The American Hoyle* of 1875 calls it *Vingt-Un*. Foster's *Hoyle*, thirty years later, lists it as *Vingt-et-Un*. Now see what happens to French in a half century of abrasion in everyday speech. Today a substantial minority of Americans call the game Van John or Pon-

toon. From Vingt-et-Un to Pontoon; from Chemin de Fer to Shimmy! A man with a sensitive ear can have a lot of fun at a gambling table and never lose a dime. . . .

Let me stipulate at the outset a distinction which I shall have to emphasize later. There are two kinds of Black Jack:

1. The private, sociable, reasonably equitable game, in which every player has a right and chance to become dealer and banker.

2. The professional or casino game, in which the house man does all the dealing and all the banking.

First, let's talk about the private game.

Private Game of Black Jack

Requirements

1. Two to seven players constitute the best game.

2. Onlookers (kibitzers) may bet on the hand of any player except the dealer.

3. The standard 52-card pack plus joker is used.

Value of Cards

1. Any ace counts either 1 or 11 according to the discretion of its possessor.

2. Kings, queens, and jacks count 10 each.

3. All other cards count their face value, two 2, three 3, four 4, etc.

4. The joker has no value, and does not enter into the play; it is used only as a locater in the deck.

Object of the Game. To get a higher count (total value of cards in hand) than the dealer up to but not over 21. Should the player draw cards forcing his total over 21, he must immediately pay the dealer-banker and he sacrifices any chance to beat or tie the dealer. The player may demand and draw any number of cards until he reaches or exceeds a count of 21.

Selecting the Dealer. The first dealer shall be selected as follows *and in no other manner:*

1. Any player by mutual consent shuffles the deck.

2. Any other player may cut it.

3. The player acting as dealer pro tem deals cards one each, face up, to each player clockwise until an ace is dealt.

4. The player dealt the first ace becomes the dealer-banker.

Losing the Deal and Bank. Ordinarily, I don't think the lawmaker on games should build variations into the basic structure of the game, but for reasons to be stated below Black Jack is an extremely special case. Herewith are specified two alternative rules under which the bank may be lost. Either is legal. I recommend that the second be adopted for the private social game. I must emphasize that before play starts all players must be acquainted with the rule under which they are playing.

1. The first player dealt a *natural* (two cards totaling 21) shall become dealer and banker at the completion of that deal. If that player refuses the deal, the player holding the natural nearest to that player's left wins the deal. If all players holding a natural refuse the deal, it remains in possession of the present dealer. Should he refuse to continue dealing, the deal passes to the player at his immediate left. If that player refuses, it passes to his left. If all players refuse it, a new dealer is selected by the means stated above under Selecting the Dealer.

2. This rule is added to stabilize the situation, too often encountered in Black Jack, in which one player gets the bank for a single deal, then loses it to another player who through sheer luck holds it for eight or ten deals. After the first dealer has been selected by the procedure set forth under Selecting the Dealer, he shall deal (bank) five complete deals. On completion of these five deals, the deal and bank shall pass to the player at the dealer's left; and, each five deals thereafter, shall move to the left, clockwise. When using this alternate rule, a natural 21 does not win the bank, although the player drawing it shall still be paid two to one on his bet.

The Betting Limit. The dealer establishes arbitrarily his own betting limits. Should a dealer after suffering losses have less money in the bank than the players want to bet, he is privileged to lower his limits. As a result of a winning streak, he can increase them.

A dealer deciding he no longer wants the bank is privileged to put the bank and deal up for auction and sell it to the highest bidder. He may auction the deal at any time—provided there are no uncompleted hands on the board. If the dealer offers the bank at auction and no player bids, it passes to the player at the dealer's left. If he rejects it, the deal passes clockwise around the table until it is accepted or a new deal for selecting the dealer is compelled.

The Shuffle and Cut. The dealer shuffles the cards and puts them in the center of the table to be cut. Any player may call for the right to shuffle any time he likes, but the dealer has the right to shuffle last. Any player may cut the cards. If more than one player wants to cut, he or they must be allowed to do so. After the cut has been completed, and the cards are squared, the deck is placed on the upturned joker, which has been left resting before the dealer. This face-up card is used as a locater in the deck.

If a joker is not handy, the dealer removes the top card of the deck, shows it to all other players, then puts it on the bottom of the deck, face up. (This is called *burning a card.*)

Payoffs. All bets are paid off at even money by both dealer and players, *except* when a player is dealt a natural, when he is paid two to one.

Betting. Before any cards are dealt, each player must put the sum he proposes to bet (within the limit) in front of himself within full view of the dealer.

The Deal. To each player, beginning with the player at his left and going clockwise, the dealer gives one card face down, dealing himself the last card face up. Then a second card is dealt to each player face down, the second card being dealt to the dealer face down. (I suggest facing the dealer's first card instead of his second, because, by giving the players more time to study the dealer's upcard and possibilities, it tends to speed the game.)

The Play. If the dealer's face-up card is a 10 count (picture card or a 10 spot) or an ace, he must look at his hole (face-down) card. If he has caught a natural—a ten or picture card plus an ace, totaling a count of 21—he immediately faces his cards and announces a natural black jack or twenty-one. The players now announce whether they have a natural. If anyone does, that sets up a *standoff*, or *push*. The dealer collects the bets of all players not holding a natural. The payoff is at even money, except in a standoff when no bets are paid.

If the dealer has not caught a natural, the player to his left plays first. If that player has 21 he calls a natural, turns over his two cards, and the dealer pays the bet off at 2 to 1 odds. Then the dealer puts them on the bottom of the deck, face up. If the player's two cards total less than 21, the player can elect within his discretion to *stay* or get *hit*.

If he is satisfied that his count is closer than the dealer's to a total of 21, the player may stay by declining another card. He signifies this intention by putting his bet on top of his cards and/or saying "Good," "I stand," or "I have enough." If he is not satisfied with his count and elects to draw more cards he says "Hit me," and the dealer gives him another card face up. The player may draw one or as many more cards as he likes, as long as his count does not exceed 21, or *bust*. When the player is satisfied with his count, he says "I stay," and puts his bet on his cards. Should a player draw a card forcing his total count over 21, he must call "Bust," and turn over all his cards. The dealer collects the bet, and turns that player's cards face up at the bottom of the deck. And the player is out of competition until a new hand starts.

Play as here described moves around the table to the left, clockwise, a man at a time.

The Dealer's Play. The dealer plays last. He may, like the players, elect to stay or draw. He turns his down card face up, and announces "Stay" or "Draw."

If he draws one or more cards and goes over 21, he must pay all players still in the game. If, staying or drawing, he remains below 21 on completing his play, he collects bets from players who have a lower count than he, and pays all surviving players having a higher count. When dealer and player have the same count it's a standoff, and neither wins.

Additional Rules. The above rules will suffice for a private game, but there's nothing sacrosanct about them. Players may by agreement incorporate into their private play as many rules as they like out of Scarne's Rules for Black Jack, Casino Play.

Black Jack, Casino Style

The basic rules of Black Jack, as played in legal casinos the world over, are the same except for some minor "dealing" and "doubling down" variations. Some casinos deal Black Jack with a single deck from the hand, dealing the players' initial two cards face down. Others deal two or four decks out of a shoe, and deal the players' first two cards face down or face up as the case may be. Some

European and Caribbean casinos, in order to prevent their Black Jack dealers from tipping off (signaling) their hole cards to agents (player cheats), do not permit their dealer to look at his face-down card until all the players have played out their hands. For the same reason, some casinos do not allow the dealer to deal his face-down card until all the players' hands have been completed.

I have selected for analysis the Black Jack rules that I have formulated—which are now in use in Nevada, Puerto Rico, Netherlands Antilles, Europe, and countless other casinos the world over. They have been chosen because they are the best of all casino rules—not only for the player's protection, but for the casino's as well. I predict that, within a few years, Scarne's Black Jack Casino rules, which follow, will be standard throughout the world.

Scarne's Rules for Black Jack, Casino Play

Requirements

1. A regulation Black Jack table with six or seven betting spaces on its layout.

2. A check rack filled with betting chips.

3. A card-dealing box called a *shoe*, and a discard receiver.

4. Four standard packs of 52 cards each, shuffled together and used as one, a total of 208 cards dealt as a single deck.

5. Two indicator cards (advertising cards). One is used by players to cut the deck and the other indicator card is used to determine the end of the deal.

6. A dealer (house man) who deals the game and functions as the banker, collecting player's losing bets and paying off player's winning bets.

7. A pit boss, or supervisor, who is a casino inspector and who stands alongside the dealer, observing every action of play. He sees to it that no mistakes are made by the dealer or the players. He is in complete charge; he rules on all disagreements and his decisions are final. All players and the dealer must abide by them, provided they are within the laws set down by the governing powers.

Number of Players

1. The house man, who is the steady dealer and the banker. He never surrenders the deal or bank.

2. One to six or seven active players, each of whom may bet on several hands depending on the betting spaces available.

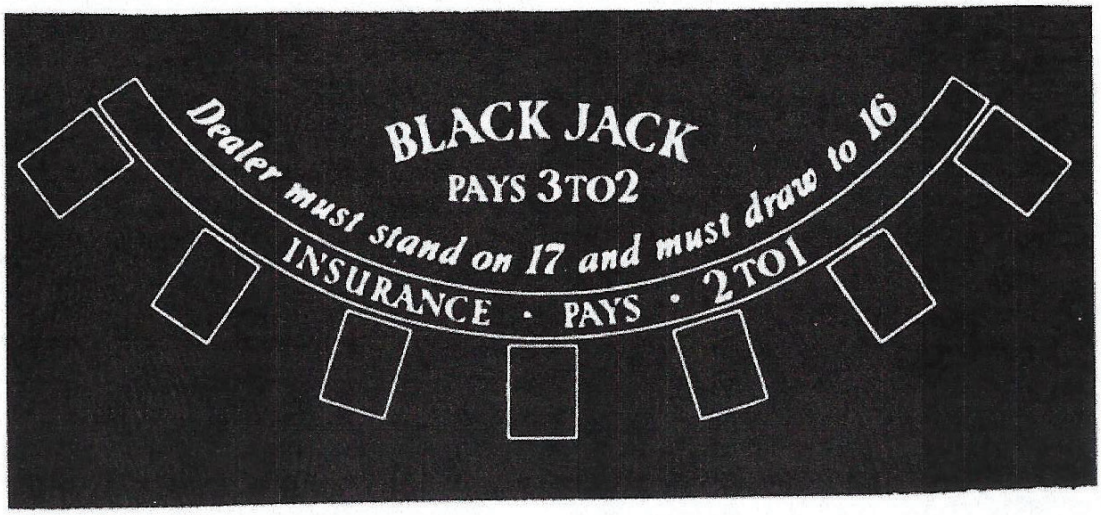
Values of Cards. The cards have the following values:

1. Aces count either 1 or 11 at the discretion of the player–holder. However, the dealer must value the ace as set down by the casino rules (see The Dealer's Turn at Play, page 281).

2. Kings, queens, and jacks each have a count of 10.

3. All other cards are counted at their face value; such as ten 10, nine 9, eight 8, etc.

The Object of the Game. A player tries to



The most common Blackjack layout.

obtain a higher total card count than the dealer by reaching 21, or as close to 21 as possible without exceeding that count. If the player's total count exceeds 21, he has busted and must turn his cards face up at once. He has lost his bet, and the dealer immediately scoops it up. The player, at his proper turn of play and at his own discretion, may stand or draw one or more cards in an attempt to better his count.

The Betting Limits. The casino sets its own limit, and the minimum and maximum bet must be announced to the players. The minimum bet limit in the Las Vegas Strip casinos is usually one silver dollar. The maximum limit is $100 in some; in others it is $200, $300, or $500. The operators will often raise the maximum to $1,000 or more at the sight of a high roller. If you like your Black Jack action small and can't stand the silver-dollar minimum, you can go to the downtown Las Vegas tables, where the minimum may be as little as 10 cents. This also holds true in Reno and other Nevada towns. The above limits in one form or another also hold true for most casinos the world over.

The Shuffle and Cut. The cards are shuffled by the dealer who then hands a player an indicator card and says "Cut, please." The player inserts the indicator card into the deck to show where he wants the cards cut. The dealer cuts the cards at this position, putting the indicator and all the cards above it on the bottom. The indicator goes to the bottom of the deck. The dealer then inserts the second indicator card about 40 cards from the bottom of the deck, and places all the cards into the dealing box face down. The dealer next deals three cards from the shoe and puts them to one side, out of play. The shoe is now ready to be dealt by the dealer. When the indicator card inserted by the dealer makes its appearance, and enough cards have been dealt to complete the round in progress, the deal ends. The dealer must begin a new shuffle and must again repeat the procedure described above.

Betting. Before the deal begins each player must place his bet in cash or chips in the betting space, which is indicated as a rectangle or circle painted on the playing layout, directly before him in full view of the dealer. In most casinos, one player may bet as many hands as there are available holes (betting spaces). Regulation Black Jack tables bear six or seven betting spaces. When a player plays more than one hand at a time, he must play the hand farthest to his right to completion before being permitted to look at his next hand or hands.

The dealer may check the amount of the player's bet to see that it is not greater than the maximum limit. If a player desires a higher limit, he may ask the pit boss, who will either grant or refuse his request.

The Deal. After all players' bets are down, the dealer, starting with the player on his extreme left, begins dealing clockwise, giving one card face down to each player and one face up to himself. He next deals each player one card face up and one face-down card to himself.

The Play. If the dealer's face-up card is a 10-count or an ace, he must look at his hole (face-down) card. If he has a natural 21 (a count of 21, with two cards), he must face it and announce "Twenty-one," or "Black Jack."

Any player with a natural 21 also announces it, and the dealer declares this to be a standoff, or push. There is no action on this hand, and no payoff is made. The dealer wins and collects bets from players not having a natural 21.

When the dealer does not hold a natural 21, the player at his left plays first. If the player holds a natural 21, he announces it and faces his cards so that the dealer can verify the count. The dealer pays off the winning natural at 3 to 2 odds. This means that if the player has bet $2, he collects $5—his own $2 plus an additional $3. The dealer then burns (buries) the two played cards.

If the player's two cards total less than 21 he may elect:

1. *To stay.* Either he is satisfied with his count or he fears that a third card may make his count go above 21. He says "Good," or "I have enough," or "I stand." Or he signifies that he is staying simply by sliding his cards under the chips he has bet.

2. *To draw a card or cards.* When the player is not satisfied with his count, he says "Hit me," or makes a beckoning motion by closing and opening his hand, or a come-on motion with a finger. The dealer then deals another card off the top of the deck face up before the player, next to his original two cards. Although the cards are dealt one at a

time, the player may continue to draw as many as he likes. When he believes that his count is the best he can get, he stays. If he draws a card that puts his count above 21, he must turn his cards up and announce a bust. The dealer scoops up the player's bet and cards, and places the cards in the discard receiver.

The play moves to the player's left, clockwise, around the table, until all players have played out their hands.

The Dealer's Turn at Play. If all players have busted, the dealer merely places his own cards in the discard receiver and deals a new hand. If any active player or players are left, the dealer plays his hand.

He turns up his hole card so that all his cards are exposed. If his count is 17, 18, 19, or 20, the dealer must stay. If his count is 16 or less, he must draw a card and continue to draw until his count reaches 17 or more—at which point he must stay. If the dealer holds a *soft* 17, that is, a 17-count that includes an ace, he must also stay. This also applies to a soft 18, 19, or 20.

It is important to note here that the Black Jack dealer has no choice as to whether he should stay or draw. His decisions are predetermined and known to the players. Since all the dealer's cards are exposed at his turn of play, he has no opportunity for any departure from these rules. The rule requiring the dealer to hit on 16 or less and to stay on 17, 18, 19, 20, and 21 is standard today in all casinos here and abroad.

Final Settlement. At the end of his play, the dealer starts with the first active player on his extreme right and moves around the table counterclockwise, paying off players who have a higher count than his with an amount equal to the bet they placed, and collecting the bets placed by players showing a lesser count. If player and dealer have the same count, it is a standoff or tie, and no one collects or loses. If the dealer busts, he pays off each surviving active player with an amount equal to his bet. As each player's bet is settled, the dealer scoops up the cards. When all the cards have been scooped up, including the dealer's, they are placed in the discard receiver and a new round is dealt.

Splitting Pairs. Any two cards that are identical except for suit may be treated as a pair. Also, any two cards each having a value of 10 may be treated as pairs, such as a ten and jack, jack and queen, queen and king, etc. A player who receives two cards forming a pair or considered to be a pair on the initial round may, if he chooses, turn them face up and treat each card as the first card dealt in two separate hands. This is called *splitting pairs*. When pairs are split, the player's original bet is placed on one of these cards and an equal amount must be bet on the other.

The player is then dealt one face-up card on the face-up card on his right, and he must play this hand out. If, in drawing to the first face-up card, he forms a pair again, he may again split pairs, betting an amount equal to his first card on this third hand. He may continue to split any further pairs. The first hand on the player's extreme right must be played to completion before the adjacent split hand is dealt a second card. Each split hand must be played out in its proper order from the player's right to his left.

When a player splits a pair of aces, he is only permitted to draw one card to each split ace, giving him two cards in all. If a paint (picture card) or ten or ace are part of a split hand, and the players make a two-card count of 21, this is not a natural and the player is paid off at even money.

The Double Down. After looking at his two face-up cards, the player may elect to double his bet and draw one additional card only. This is known as a *double down* or *double for double*. A player before calling "down for double" or "double down" must place an amount equal to his original bet on the betting space. The player is then dealt a third and final face-down card on the two face-up cards. Player is not permitted to look at his face-down card until the dealer turns it face-up after the deal has been completed.

Insurance Betting. In many casinos, when the dealer's face-up card is an ace, players may make an insurance bet against losing to the banker's possible natural. The dealer, before looking at his down card, inquires if any player wants insurance. A player who desires insurance places an amount equal to half his present wager on his own hand. When this bet is made, the dealer looks at his down card. If it is a 10-count, he turns it face up and announces a natural. The insurance bettor is paid off at the rate of 2 to 1 for every unit wagered. If the dealer's down card is not

a 10-count card, the player loses his insurance bet.

Why Scarne's Casino Rules Are Used. Back in 1957, while acting as gaming consultant to the Havana Hilton Hotel Casino in Cuba, I developed the present four-deck Black Jack dealing box and ruled that all cards be dealt face up except the dealer's hole card and players' double-down cards. Shortly thereafter, I also devised the ruling that 40 or more bottom cards of the four-pack deck should never come into actual play. This was achieved by having the dealer insert an indicator card 40 or more cards from the bottom of the 208-card deck and ending the hand when the indicator card makes its appearance. These innovations achieve the following advantages:

1. The card box eliminates 95 percent of the cheating methods employed by both crooked house dealers and players alike.

2. When the players' cards are dealt face up, it helps the dealer to correct any errors that a player may have made when totaling the numbered value of his playing hand. And, owing to the fact that the dealer (house) does not have any discretionary powers on when to hit or stand, it doesn't matter if the dealer sees a player's cards or not. In addition this prevents any card-cheat player from switching one or both of his face down cards for others that he may have secretly palmed.

3. The purpose of inserting the indicator card toward the bottom of the 208-card deck is to prevent the cutoff cards from coming into actual play. This, in turn, prevents case-down or count players from memorizing or clocking the cards as they are being dealt; by so doing, such players learn the identity of the last few undealt cards, thereby gaining an advantage over the house.

Although this last ruling was devised by me back in 1957, it did not gain popularity until shortly after the publication of *Scarne's Complete Guide to Gambling* in 1961. At that time, hundreds of Black Jack players learned from its pages that the more aces and tens remaining in an undealt portion of a single 52-card deck, the greater were their chances of beating the house. So, hundreds of these players began casing the deck, and it seemed at that time that every other player seated at a Black Jack table in Nevada and elsewhere was clocking aces and tens. Las Vegas Casino operators became so alarmed that they changed a number of rules. They ruled that players could not double down on a count of 11, nor could players split aces; but to no avail. Then came my four-deck deal with its indicator cut, and Black Jack play was restored to normal.

Black Jack Strategy

In the following pages I shall show you exactly where the house extracts its advantage, and how you can shave that percentage to a minimum. But, more important, if you adhere to my strategy, you will certainly improve your game, and become as Black Jack sharp as most professional gamblers in Las Vegas or, for that matter, anywhere else in the world.

In Black Jack, the house advantage is the result of the dealer playing last. When you bust by going over the mathematical deadline of 21, the dealer doesn't bother to wait to play his hand. He rakes in your bet; and, as far as you are concerned, the transaction is closed. You are through. All you can do is sit around and wait until the hand is completed and a new deal takes place. This is the crux of the hidden percentage that works in the house's favor; this is the real reason why gambling-house operators get richer and players get poorer. However, this isn't as unfair as it may appear, because the dealer has five disadvantages going against him. These disadvantages will help to reduce the dealer's advantage of playing last—providing the player knows what to do at the proper time.

1. Despite the fact that the dealer sees the player's hand (and knows the player is standing with a count of 12, 13, 14, or 15) and he holds a 16 count, he (the dealer) must hit. On the other hand, if the player holds a count of 18, 19, 20, or 21, and the dealer has a count of 17, he must stand.

2. The player is paid off at 3 to 2 odds on a black jack (or natural). This happens about once in 21 deals. The dealer, therefore, pays out one additional unit as a bonus every 42 deals for a player advantage of 2.37 percent. (The standoff that occurs when both dealer and player hold a natural 21 happens once in 441 deals. It affects the percentage figure so very little that we can forget about it.)

3. The player may call double down and double the amount of his original bet in favorable circumstances.

4. The player may split a pair and double the amount of his bet by playing two hands instead of one in favorable circumstances.

5. The player sees one of the dealer's cards (the upcard) and may use this information in deciding how to play his hand. This, combined with the dealer's predetermined rules of drawing to 16 or less and standing on 17 or more, is going to figure prominently in the strategy I have outlined in the following pages.

To set the record straight, I repeat what I first claimed in *Scarne's Complete Guide to Gambling* in 1961 and what is now accepted as fact, namely: The dealer's bust advantage is 8.27 percent when the player adheres to the dealer's fixed strategy by hitting a count of 16 or less. Then, by subtracting a player's 2.37 percent advantage when paid 3 to 2 odds when holding a natural, the dealer's advantage comes to 5.90 percent. The author was also first to calculate the dealer's advantage at 8.72 percent when the player refuses to hit a possible bust count and stands on a count of 12, 13, 14, 15, or 16. Subtracting the player's bonus of 2.37 percent for a natural black jack, the dealer's advantage is 6.35 percent. These results have been proven to be correct over the years; without this information, any mathematical analysis of the game of Black Jack would be meaningless. The player can cut down the bank's overall edge of 5.90 percent or 6.35 percent considerably if he follows the Scarne Black Jack strategy that follows. The bank's edge is cut:

1. About 2 1/2 percent for proper hitting or standing on both "hard" and "soft" hands.

2. About 2 1/2 percent for proper doubling down when the casino permits a double down on any two cards. About 1/4 percent for proper doubling down when the casino permits a double down on a count of 9, 10 or 11; the same holds true for doubling down when the casino permits a double down only on 11.

3. About 1/2 percent for proper splitting of pairs.

To emphasize, these figures apply only when the Scarne strategy is used intelligently. All the mathematical analysis contained in this chapter is based on the use of a single 52-card deck. However, I would like to point out that the bank's favorable single-deck advantage of 5.90 percent or 6.35 percent increases to a mere 6.00 percent or 6.45 percent when four decks are in use. The Scarne strategy as depicted in this text equally applies to single-deck and double-deck Black Jack. However, my strategy does not guarantee that you will win—it simply cuts down the bank's percentage to its lowest possible level and gives you a better opportunity to win than any other method of Black Jack play, including those of the many so-called computerized systems making the rounds.

Scarne's Basic Strategy for Black Jack

Hitting and Standing on Hard Counts

1. Always stand on a count of 17 or more.

2. Always draw to a count of 2 to 11.

3. When the dealer's upcard is a 5-spot or 6-spot, the player should stand on a count of 12 or more, draw to a count of 11 or lower.

4. When the dealer's upcard is a 2-, 3-, or 4-spot, the player should stand on a count of 13 or more, draw to a count of 12 or lower.

5. When the dealer's upcard is an ace or 10-count card, the player should stand on a count of 16 or more, draw to a count of 15 or lower.

6. When the dealer's upcard is a 7-, 8-, or 9-spot, the player should hit a count of 16 or less.

Soft-Hard Strategy. When a player holds a hand that contains an ace, there are sometimes two possible counts, neither of which exceeds 21. A hand containing an ace and a six may have a count, or value, of either 7 or 17, because an ace can be valued as either 1 or 11. This ambiguous type of hand is known to Black Jack dealers as a soft count or as a two-way hand. Playing it correctly requires special strategic considerations, as follows:

1. When the dealer's upcard is an eight, nine, ten, or ace, the player should stand on a soft count of 19 or higher, and draw to a soft count of 18 or lower.

2. When the dealer's upcard is a two, three, four, five, six, or seven, the player should stand only on a soft count of 18 or higher, and draw to a soft count of 17 or lower.

Note that the holder of a soft hand should never stand until his total count is at least 18. He should continue to draw to his soft count, and stand as indicated above. If, when the player draws one or more cards, his soft count exceeds 21 (this occurs often, since a high soft count is being hit), the player should revert to the standard hard count hit-and-stand strategy, because he no longer holds a soft

hand. *Example:* The dealer's upcard is a 6-spot; the player hits a soft 14 and draws a 9-spot. His total count is now 13. If he counts the ace as 11, he has a count of 23. The hand is no longer soft, so the player reverts to his standard strategy, and stands on 13.

Soft hands are advantageous to the player because, if he uses the right strategy, he gets two chances: First, he tries for a high count by hitting a soft count; and if that fails, he reverts to the standard hard count hit-and-stand strategy.

Splitting Pairs

1. Always split aces, even when the casino rules permit only a one-card draw to a split ace.
2. Never split fours, fives, sixes, or tens.
3. Always split eights unless the dealer's upcard is a nine or ten.
4. Split sevens when the dealer's upcard is a two, three, four, five, six, seven, or eight.
5. Never split nines when the dealer's upcard is a seven, ten, or ace.
6. Always split twos and threes when the dealer's upcard is an eight, nine, ten or ace.

Doubling Down

1. Always double down on a count of 11, no matter what the value of the dealer's upcard is.
2. Double down on a count of 10 when the dealer's upcard is anything but an ace or 10-count.
3. Double down on a count of nine when the dealer's upcard is a two, three, four, five, or six.
4. Double down on a soft 12, 13, 14, 15, 16, or 17, when the dealer's upcard is a six.

The strategy rules shown above take into consideration all the Black Jack bets permitted in all the casinos the world over. However, rarely will you find a casino in which you can put into play all strategy rules described above. *Example:* Casinos in Puerto Rico permit a double down on 11 only. Casinos in Curaçao, Aruba, and St. Maarten permit a double down on 10 and 11 only. Most casinos in Nevada permit a double down on any two cards. And so it goes, from country to country. However, the hit-and-stand strategy rules on both the hard and soft counts are usable in all casinos, and will be of greater help in cutting down the house's advantage than all the other strategies combined. So, memorize them first.

Insurance Betting. As previously mentioned, some casinos allow players to make a so-called insurance bet against losing to a natural whenever the dealer shows an ace as his upcard. Since the insurance bet pays off at 2 to 1 odds, the player must win one-third of the time to get a dead-even proposition. If the dealer's upcard is an ace, and you have no knowledge of any other cards, then the dealer's down card may be considered drawn at random from 51 cards that remain unseen. But under such conditions the 51-card deck contains 16 10-count cards, and the player can win this bet only when the dealer has a 10-count card in the hole. In the long run he will win only 16 of his bets, losing 35. Since insurance bets are paid off at 2 to 1, or 32 to 16, against an expectation of 35 to 16, the player is shorted 3/51, or approximately 6 percent; or, to be exact, 5 15/17 percent.

Most gamblers unwisely insist on buying insurance whenever they hold black jack on the grounds that they want to be sure of a win. The odds are 34 to 15 that the dealer doesn't have a natural, and you will not collect the 2 to 1 insurance bet. Your expectation is minus 4/49, for a house edge of about 8 percent. The casual card caser (counter) can use the insurance bet advantageously if he has kept track of the 10-count cards dealt in previous hands. For example, suppose half the deck (26 cards) has been dealt and the card caser recalls that only three 10-count cards have been dealt. If an insurance bet could be made on the next deal, it would be wise to take out insurance. Under these circumstances the player will win 13/26, or 50 percent, of his bets. Since the bank pays insurance bets off at 2 to 1, the player has an edge of 33 1/3 percent over the bank on this bet.

For the above reason, banks permit players to bet only half the amount of their initial wager when making an insurance bet, and for the same reason several small casinos no longer permit any insurance bets. But don't think for a moment that card casing and the memorizing of previously dealt cards will put the Black Jack percentages in your favor—not with the present-day method of dealing casino Black Jack. I have known only six professional gamblers in my entire gambling history who ever beat the game of Black Jack by putting the percentages in their favor through "card casing," or, as it is more commonly known, "counting down the deck." I

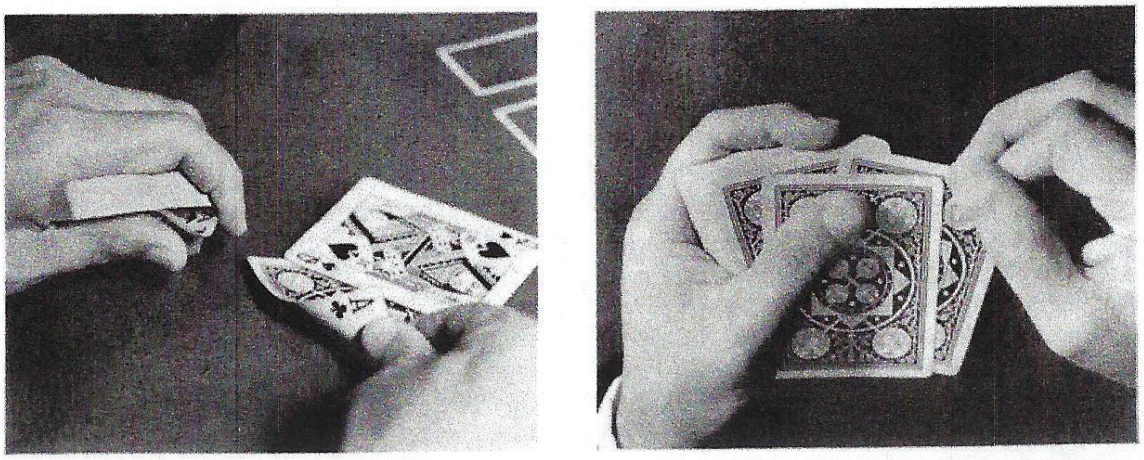
was the first person to beat the game with a countdown, and the first to be barred from playing Black Jack in Las Vegas, back in 1947. I was barred because I told Benjamin (Bugsy) Siegal, builder of the swank Flamingo Hotel Casino, that I could beat the game with a countdown. He challenged me to prove it. I did, by beating every casino on the Las Vegas Strip. The result—I was barred from the casino Black Jack tables throughout Nevada and the rest of the country.

Though card casing, or counting down the deck, has been a lost gimmick since 1963, now and then you'll spot a Johnny Come Lately trying it on some casino boss. If the boss doesn't know his business, the card caser may get away with it. The machinations of a modern-day card caser stand out like a bright light in a moonless night. First, he seeks a casino that deals single-deck, then he takes a vacant Black Jack table for himself. Then his confederate, who is a partial card caser, takes his position beside him—sometimes the caser makes use of two confederates. At the beginning of each new deal, his bets are usually the house minimum of each of the six or seven betting spaces. This type of betting continues until near the end of each deal, when a whispered consultation takes place between the card caser and his assistants. If they agree that the remaining undealt cards appear disadvantageous to the house, they increase the size of their bets to the maximum house limit. A smart house man counters this Black Jack chicanery by reshuffling the entire deck, including the undealt cards. The card caser complains a bit, calls off his bets, exits from the casino, and shops around seeking a casino whose boss is stupid enough to stand for such nonsense. That's the life of a professional card caser. Most of these casers haven't got a dime. Therefore my advice is: Don't try to be a card caser.

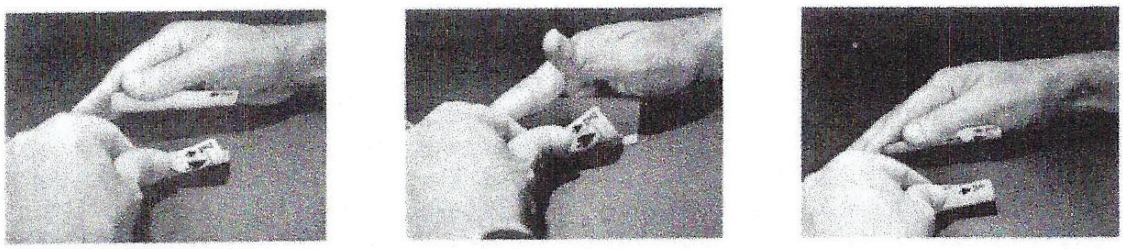
However, I should like to emphasize an important practice to follow at the Black Jack tables: When your luck is running good, and you're winning money, by all means increase the size of your bets and try to win as much as possible in the shortest space of time. However, if your luck is running bad, decrease the size of your bets. Better yet, seek the nearest exit.

Protection Against Black Jack Cheats. More cheating takes place at the Black Jack tables than in any other casino banking game because Black Jack offers more opportunities for cheating. Many complaints about cheating usually come from players, but very often it is the casino operators themselves who have been cheated. Actually, casino operators lose millions of dollars annually by crooked Black Jack dealers tipping off (signaling) their face-down or hole card to player cheats (when the dealer's upcard is an ace or ten). I don't intend to explain all the cheating methods used to beat the operators because I don't want to aid and abet the Black Jack cheats. But because I am interested in protecting the public, I will explain how some dishonest casinos fleece the honest player.

The most common cheating method used in crooked casinos when making use of four



Cheating at Blackjack. Scarne demonstrates (left) how a dishonest dealer can, under cover of looking at his hole card, get a peek at the top card of the deck held in his left hand. If the top card is one the dealer wants to retain, he deals the second card instead (right), but you can't stop the action as the photographer did here; the move is undetectable when it is fast and smooth.



Hole-card switch. Cheat looks at his hole card (left) as right hand approaches with ace palmed. Ace slides in under king (center), and is left on table (right) as right hand goes away with the king palmed. The whole action takes only a second or two.

decks (208 cards) is to remove a number of 10-count cards and to replace them with 5-count cards. Because the dealer must hit a count of 16, the substitution of fives for tens avoids many a normal dealer bust and supplants these with additional dealer twenty-ones. To protect yourself against such cheating subterfuges, count the 5-counts and 10-counts as the hands are played. If you count less than sixty-four 10-count cards or more than sixteen 5-count cards—seek the nearest exit. For your own safety, don't make a scene. A thief caught red-handed is always a dangerous thief.

More cheating takes place when the game is dealt single-deck from the hand than in any other phase of the game. For additional information on card cheating, see Protection Against Card Cheats, page 423. The best assurance you can have that the game is honest is to see that the players' cards are dealt face up, out of a shoe (card box) containing four decks, instead of one or two decks being dealt from the hand.

Pontoon

Pontoon, an English variant of the American game of private Black Jack, is also referred to as Van John in Australia. Its basic rules, as played throughout the British Empire, are the same except for the doubling, redoubling, and bonus variations that have been included in this text. The rules of the Private Game of Black Jack apply, with the following exceptions and additional rules:

1. *First Round of Dealing.* Dealer gives one face-down card to each player in rotation, including himself.

2. *Betting.* After looking at his card, each player places a bet, which must be not less than the minimum bet nor more than the maximum bet designated by the dealer (banker). After all players have placed their bets, the dealer has the option to have each player's bet doubled, providing it does not exceed the maximum limit. Any player may thus redouble his bet. *Example:* A player bets one unit, dealer doubles, requiring that player to put up one more unit. Any player refusing to double loses the bet already put up and is out of the game for that hand. The player redoubles, putting up two units making his total bet four units.

3. *Completion of the Deal.* Dealer then gives one card face up to each other in rotation, including himself.

4. *Natural.* If the dealer has a natural (ace and 10-count), every player pays him double the amount of his bet; however, a player holding a natural pays the dealer only the amount of his bet. If a player holds a natural and the dealer does not, the dealer pays that player double the amount of his bet.

5. *Dealer Takes Ties.* If the dealer and a player have the same count, the dealer wins the bet.

Bonus Payments. Any player who possesses one of the following combinations collects immediately from the dealer and cannot lose his bet even if the dealer has a higher count:

1. If a player has five cards and his total is 21 or under, he collects double his bet; with six cards totaling 21 or under, four times his bet; and so on, doubling for each additional card.

2. A player who makes 21 with three sevens receives triple the amount of his bet.

3. A player who makes 21 with eight, seven, and six is paid double the size of his bet.

The dealer is not entitled to any of the above bonuses.

Farmer

This game is a rather sophisticated country cousin of Private Black Jack.

Requirements

1. A regular pack of playing cards out of which have been stripped the eights and all the sixes except the six of hearts, making a 45-card deck.
2. Two to eight players.

Value of the Cards. The cards take the same value and count as the cards at Black Jack, except that aces count 1 only.

Object of the Game. To draw cards for a total of 16 or as close to 16 as possible without exceeding 16.

Selecting the Farmer. Any player may shuffle. Any player may cut. The acting dealer deals each player one card face up, starting with the player to his left and continuing clockwise. The player to whom the six of hearts is first dealt becomes the *farmer*.

The Ante. Each player antes one unit in cash to form a pool known collectively as the farm.

The Shuffle and Cut. The farmer shuffles. While any other player may call for and have the right to shuffle before the cards are cut, the farmer has the right to shuffle last. The deck is then squared and presented to the player at the farmer's right for the cut. He may decline, and any other player may cut the cards; but if all other players decline to cut, it is compulsory that the farmer himself cut.

The Deal. Starting with the player at his left and dealing clockwise, the farmer deals each player one card face down, the last card to himself.

The Play. The player at the farmer's left plays first, and thereafter the turn of play rotates one man at a time, clockwise, the farmer playing last. A turn of play consists of a player's drawing at least one card. This is mandatory. The player may draw as many cards as he chooses, as long as his total count does not exceed 16. A player may stay—that is, decline to draw more cards—after drawing one or more. Should a player's count exceed 16, he does not (as in Black Jack) turn up his face-down card and announce that he is over. He merely says "I stay."

After all players including the farmer have had a turn of play, each player—starting with the one at the farmer's left—face their cards, and announce their count.

1. Any player holding a count of 16 wins the farm and becomes the next farmer.
2. If more than one player hold a count of 16, and one of those players has the six of hearts, he is the winner.
3. If more than one player have a count of 16 without the six of hearts, the player having the fewest cards is the winner.
4. Should there be ties and should the farmer be one of the tied players, the farmer is the winner.
5. In case of ties, if the farmer is not involved, the tied player closest to the farmer's left is the winner. The winner, in any case, becomes the new farmer or dealer.
6. If no one holds a count of 16 the farm (pool) remains on the table, and the same farmer deals a new hand; and each of the players must ante again.

Payoff. On the completion of each deal, whether or not the farm has been won, each player who has gone over 16 must pay one unit to the farmer who dealt the bust hand. Should the farmer bust, he does not have to pay a unit to anyone. If no one holds a count of 16, the player with a count nearest to 16 gets one unit from each player holding a lesser count—but not from players who have gone over the limit of 16. In case of ties on counts nearest 16, the tied players divide the payoff units equally.

Fifteen

One of the names by which this variation is known, Quince, suggests *quinze* and a French genealogy. It's also known as Ace Low, and Cans. Fifteen is Black Jack for two players; otherwise all the Black Jack rules apply except for the following:

1. The count which dealer and nondealer are trying to approach but not exceed is 15.
2. The value of the cards is the same as at Black Jack, except that aces count 1 only.
3. Before the cards are dealt, dealer and nondealer put up an equal amount in the pool.
4. The dealer gives his opponent one card face down, then one face down to himself.
5. The nondealer may draw cards (face up) or stay as in Black Jack. If, when draw-

Exhibit B

Mathematical Analysis

of the Following Game:

Vingt Un / 21

May 27, 2025

Prepared By:

Michael Shackleford
Lollipop Guild, Inc.
Las Vegas, NV

Qualifications

My name is Michael Shackleford. My educational background is a degree in math and economics from the University of California, Santa Barbara. I am a former actuary with the Society of Actuaries, having previously held the title of associate. Since 2000, I have focused my career as a gaming mathematician and consultant for gaming companies throughout the world. A copy of my resume is included with my report.

Rules

I was asked to perform an analysis of the odds for the historic game of Vingt Un (also known as twenty-one) circa 1885. For this purpose, I used a ruleset based on five editions of *Hoyle's Rules* published between 1875 and 1890. A copy of these rulesets is included after my report.

The rules employed for this analysis are listed below and are a composite of the common rules across all versions of *Hoyle's Rules* that I reviewed.

1. A standard 52 card deck is used. Aces count as 1 or 11, 2-10 according to pip value, and the face cards king, queen and jack count as 10. Suits are not relevant.
2. The dealer deals each player and herself one card, all face down.
3. After seeing one card, each player must make a wager. The wager must be within the range previously agreed upon by the players (for example between 1-4 chips of equal denomination), but not less than one chip. For my analysis, I assume the player will bet two chips with a 10 or ace and one chip otherwise.
4. The dealer looks at her card. The dealer may declare "double," in which case players must either double their bets or fold to the dealer. The analysis assumes that dealers who receive a 10-value card or Ace will declare double.
5. The dealer deals a second card to all players and herself, all face down.
6. A Vingt Un/21 is the highest ranked hand and consists of an ace and any 10-point card.
7. If the dealer has a possible Vingt Un/21, she will look at her second card. If the dealer's two cards form a Vingt Un/21, she will declare it immediately. Any tie with a player Vingt Un/21 shall be a push. Otherwise, the dealer shall win double all player stakes to this point.
8. Otherwise, the players play in turn.
9. A player with a Vingt Un/21 shall be paid 2 to 1.

10. For players without a Vingt Un/21, the only options available to the player are hitting, standing and splitting a pair. If the player goes over 21, he must so state and his wager is lost.
11. If the player's initial two cards form a pair, he may split them. This separates the pair into two individual hands, each starting with one of the cards of the pair. The player's wager must be doubled, with the original wager on one hand and the doubled portion on the other.
12. Splitting unpaired ten value cards, for example a king and queen, is not allowed.
13. Both player and dealer may re-split, without limit.
14. After all players have acted, the dealer shall stand, hit or split. The dealer has free will how to play.
15. The player and dealer hands are compared to see which is closest to 21. If the player is closer, he wins even money on his wager. If the dealer is closer, she wins the player wager.
16. If the player draws to 21 points, he shall be paid 2 to 1, including if the dealer busts.
17. If the dealer draws to 21 points, and the player stands with 20 or less, the player must pay double. Note if the player already busted, he does not have to pay double.
18. The dealer wins on ties except a Vingt Un/21 or 21-point tie.

Analysis

A significant difference between Vingt Un and modern blackjack is that in the former, the dealer had free will to hit, stand or split. In comparison, in modern blackjack, the dealer must draw to a total of 17 or more, regardless of the player totals. This substantially increases the number of variables to consider.

Due to the fact that both dealer and players have free will in Vingt Un, it would be very complicated to analyze the game with two or more players playing against a dealer at the same time. To simplify the analysis, I make the following assumptions.

1. There is one player only, not including the dealer.
2. The player shall start with a one-chip bet.
3. Both sides will double with any 10-point card or an ace.
4. Neither side will ever split. I make this assumption because I feel the benefit of splitting will cut roughly equally both ways.

I find the optimal strategy for the player is to draw to a total of 17 points or more. This includes a soft 17. The optimal strategy for the dealer is as follows:

- If the player did not bust, draw until achieving a total equal or greater to the player, or bust trying.
- If the player did bust, draw until achieving exactly 21 points, or bust trying. This is because the dealer will win 2x with a total of 21.

This analysis is based on a computerized simulation of 155 billion hands. The following table shows my results of all possible combinations of player bet, dealer bet, and final outcome. A Vingt Un/21 is referred to as VU.

Event	Player bet	Dealer bet	Probability	Player win	Expected Win
Player winning VU	1	1	0.000000	2	0.000000
Dealer winning VU	1	1	0.000000	-2	0.000000
Both sides VU	1	1	0.000000	0	0.000000
Player winning 21	1	1	0.000000	2	0.000000
Dealer winning 21	1	1	0.023638	-2	-0.047275
Both sides 21	1	1	0.005077	0	0.000000
Player 21 dealer busts	1	1	0.030583	2	0.061166
Dealer 21 player busts	1	1	0.012191	-1	-0.012191
Player outscores dealer	1	1	0.000000	1	0.000000
Dealer outscores player	1	1	0.047558	-1	-0.047558
Tie	1	1	0.034299	-1	-0.034299
Player busts	1	1	0.072747	-1	-0.072747
Dealer busts	1	1	0.107665	1	0.107665

Event	Player bet	Dealer bet	Probability	Player win	Expected Win
Both bust	1	1	0.043366	-1	-0.043366
Player winning VU	1	2	0.000000	4	0.000000
Dealer winning VU	1	2	0.030693	-4	-0.122771
Both sides VU	1	2	0.000000	0	0.000000
Player winning 21	1	2	0.000000	4	0.000000
Dealer winning 21	1	2	0.007015	-4	-0.028062
Both sides 21	1	2	0.002145	0	0.000000
Player 21 dealer busts	1	2	0.018064	4	0.072256
Dealer 21 player busts	1	2	0.003196	-2	-0.006392
Player outscores dealer	1	2	0.000000	2	0.000000
Dealer outscores player	1	2	0.047386	-2	-0.094773
Tie	1	2	0.021970	-2	-0.043939
Player busts	1	2	0.051371	-2	-0.102742
Dealer busts	1	2	0.043238	2	0.086477
Both bust	1	2	0.015663	-2	-0.031326
Player winning VU	2	1	0.030694	4	0.122775
Dealer winning VU	2	1	0.000000	-4	0.000000
Both sides VU	2	1	0.000000	0	0.000000
Player winning 21	2	1	0.000000	4	0.000000
Dealer winning 21	2	1	0.018657	-4	-0.074629
Both sides 21	2	1	0.001343	0	0.000000
Player 21 dealer busts	2	1	0.008046	4	0.032185
Dealer 21 player busts	2	1	0.004517	-2	-0.009034
Player outscores dealer	2	1	0.000000	2	0.000000
Dealer outscores player	2	1	0.022642	-2	-0.045283
Tie	2	1	0.024108	-2	-0.048216
Player busts	2	1	0.026730	-2	-0.053459
Dealer busts	2	1	0.088345	2	0.176689
Both bust	2	1	0.015662	-2	-0.031325
Player winning VU	2	2	0.015334	8	0.122675
Dealer winning VU	2	2	0.015334	-8	-0.122669
Both sides VU	2	2	0.001733	0	0.000000
Player winning 21	2	2	0.000000	8	0.000000
Dealer winning 21	2	2	0.005543	-8	-0.044347
Both sides 21	2	2	0.000543	0	0.000000
Player 21 dealer busts	2	2	0.004591	8	0.036727
Dealer 21 player busts	2	2	0.001143	-4	-0.004573
Player outscores dealer	2	2	0.000000	4	0.000000
Dealer outscores player	2	2	0.021458	-4	-0.085833
Tie	2	2	0.018294	-4	-0.073176
Player busts	2	2	0.017718	-4	-0.070871
Dealer busts	2	2	0.034355	4	0.137420

Event	Player bet	Dealer bet	Probability	Player win	Expected Win
Both bust	2	2	0.005343	-4	-0.021371
Total			1.000000		-0.416196

The lower right cell shows the player can expect to lose 41.62% of one unit per hand. In other words, the house advantage in Vingt Un is 41.62%[1]. By comparison, the house advantage in modern blackjack usually ranges from 0.27% to 1.98%. [2]

[1] I also examined two rule variations that appeared in the rulesets I reviewed. In certain rulesets, a tie is designated as a push, rather than a dealer win. In my model, this rule change lowers the house advantage to 21.66%. In another ruleset, the dealer's option to double upon seeing his first card is listed as a rule variation. In my model, this rule change lowers the house advantage to 21.75%.

[2] Ties always are treated as a push in modern blackjack. I understand the California Bureau of Gambling Control has proposed a regulation that would require any lawful blackjack-style game to treat ties as a win for the player. I analyzed the effect of this rule change by using the same statistical model as described above, but based on conventional blackjack rules. According to my analysis, if ties were treated as a win for the player, all other things being equal, then the odds would move 10.0% in favor of the player. This would lead to a player advantage ranging from 8.02% to 9.73%.

Conclusion

If you or any interested party have any questions, please let me know.

Regards,

Michael Shackleford

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OBJECTIVE

As an independent agent, I perform casino game analysis utilizing my background in mathematics and computer programming. I also do beta testing and act as a consultant to firms in the business of online casino software.

ACCREDITATION

Associate, Society of Actuaries, June 1995 to 2017

EDUCATION

BA Mathematics/Economics, June 1988
University of California, Santa Barbara
Dean's list, Omicron Delta Epsilon Honor Society in Economics

COMPUTER SKILLS

Languages: C++, Java, Fortran, Perl, UNIX, Pascal
Software: Excel, Word, Visual C++, Visual J++, Access, Focus, SAS

EXPERIENCE

October 1998 – Present
Wizard of Odds Consulting/Lollipop Guild – Sole Proprietor
This business consists of evaluation and consultation about potential table and electronic games to determine optimal player strategy, the house edge, and any other statistics requested. Such analysis has consisted of random simulations, optimal computer play utilizing artificial intelligence via recursion, and purely mathematical calculations.

February 1992 – April 2000
Social Security Administration – Actuary
This position consists of various duties, primarily cost estimates of legislation on both benefit payments and tax revenue. In addition I maintain a database of statistical resources for the office, prepare statistical reports on a regular basis on specific aspects of Social Security, create new CGI and JAVA programs to simplify complicated and frequently used calculations, and write in-depth reports on issues relating to Social Security.

June 1997 – Present
Wizardofodds.com – Founder
Founder and current writer for the gaming web site www.wizardofodds.com. This is a well-known web site for gambling advice. I feature my own mathematical analysis of hundreds of casino games as well as other features to teach viewers how to maximize their odds in the casino.

January 2002 – June 2005
University of Nevada, Las Vegas – Adjunct Professor
Part-time professor of casino math course, under the department of hotel and casino management.

Attachment A

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HOYLE'S GAMES.

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Vingt-un.

VINGT-UN, or Twenty-one, is a very interesting game, and may be played by two or more people. It is essentially a family game, and when played as such, the stakes are usually represented by counters, which may be of any value say sixpence the dozen, or more. It is common to limit the stakes to be laid to a dozen of counters, or the amount in money which they represent. As the deal is advantageous, and often continues long with the same person, it is usual to determine it at the commencement by the first ace turned up, or any other mode that may be agreed upon.

The deal is retained by the person who commences, until a natural Vingt-un occurs, when it passes to the next in rotation.* (The old mode of play, however, is, that in the case of a natural Vingt-un the deal passes to the holder, and many still adhere to this custom. This item of the game must, therefore, be regulated by the custom of the table, or be previously agreed.) The poney or youngest hand should collect the cards that have been played, and shuffle them together ready for the dealer against the period when he shall have distributed the whole pack.

The dealer begins by giving two cards, one at a time, face downwards, to each player, including himself. After the first card has been dealt round, each places his stake upon it (which may, if he chooses, be as low as a single counter), and then receives the second card; but the dealer, upon the stakes being all laid, and before proceeding with the deal, looks at his own card, and if he thinks proper (having perhaps an ace, ten, or court-card), he may double the stakes, which he announces by crying "double." He then distributes a second card to each, and lastly to himself. Should he chance to have a natural Vingt-un, he declares it at once, before any more cards are dealt, and collects the stakes (which, by a Vingt-un, are doubled), but should he have drawn less than 21, the game proceeds thus: The dealer inquires of each player in rotation, beginning with the eldest hand on the left, whether he stands, or wishes for another card, which, if required, must be given from off

* Should a natural Vingt-un occur in the first round it does not put out the dealer being allowed a *misericorde*.

the top (face upwards) of the pack, and afterwards another or more, if requested, till the points of the additional card or cards, added to those dealt, exceed or make 21 exactly, or such a number less than 21 as the player may choose to stand upon; but when the points exceed 21, the player is technically said to have overdrawn, and his cards are to be thrown up forthwith, and the stake laid on them paid to the dealer. When the dealer has gone the round of the table in this manner, he turns up his own cards to the view of the company, and should he have any number of points between, say from 17 to 20, he usually "stands," that is, pits his cards against the other players. Those under his number, as well as ties,* pay—those above it, receive.* If the dealer should have only 14 or 15 points in his first hand, the chances would be against him were he to stand on so small a number. He would therefore draw another card, and should this be a very low one (an ace or a deuce), and he have reason to suppose, by the extra cards dealt round, that he had to contest high numbers, he would draw again, and if he obtained 19 or 20 points would then probably win on more than he loses, the average of chances being in his favor; if by drawing he should happen to make up 21, he would receive double from all, excepting from the ties and those who had already thrown up; if more than 21, he would have to pay all who stand, paying the Vingt-uns double.

Should either the dealer or a player happen to turn up two cards of the same denomination, for instance, two aces, deuces, or any other number, or two kings, two queens, &c., he would have the choice of going on both, and should the next card he draws be a triplicate, he may go on all three. If the cards happen to be aces, which count either as 1 or 11, at the option of the player, and if by great luck he should successively draw three tens, or court-cards, thus making three natural Vingt-uns, he would obtain double stakes upon each, therefore six times as much as the stakes placed on the various hands; and should he, on laying his first card, have cried "double," the stakes payable would, in such case, be twice doubled, therefore upon the three cards twelve-fold. This is an extreme case, cited merely to show the nature of the game. It commonly happens, however

* Ties are the principle advantage of the dealer

that when either dealer or player "goes" on several cards, he loses on one or more, and thus neutralizes his gains. Players, as already intimated, have the same right of "going" on several cards, as the dealer.

When any player has a Ving.-un, and the dealer not, then the player wins double stakes from him; in other cases, except a natural Vingt-un happens, the dealer pays single stakes to all whose numbers under 21 are higher than his own, and receives from those who have lower numbers; players who have similar numbers to the dealer pay; and when the dealer draws more than 21, he overdraws, and has to pay to all who have not thrown up, as already stated.

Twenty-one, whensoever dealt in the first two cards, is styled a natural Vingt-un, and should be declared immediately. Hoyle says that this entitles the possessor to the deal, besides double stakes from all the players, unless there shall be more than one natural Vingt-un, in which case the younger hand or hands so having the same, are exempted from paying to the eldest. But this rule, like that mentioned at page 73, is nearly obsolete. It is not now customary to allow any except the dealer to take double stakes from the company, in respect to his natural Vingt-un.

One of the first thoughts of the dealer, after the cards have been cut, should be to look for *brulet*, which is a natural Vingt-un formed by the bottom and top card, when they happen to be an ace and tenth card. The card or cards looked at must be thrown out, and mixed with those collected by the poney. Brulet either clears the board of the stakes laid (usually one or two counters levied on each player, at the commencement of every game, and collected into a tray), or takes the amount of the limit from each, as may be agreed.

The deal, it should be observed, may be sold to the best bidder, and, as it is undoubtedly of some advantage, a buyer will generally be found. But should a timid player object to the deal, and no buyer be found, he may decline it, and so let it pass to the next.

[N. B. An ace, as already intimated, may be reckoned either as 11 or 1; every court-card is counted as 10, and the rest of the pack according to their points.]

The odds of this game merely depend upon the average quantity of cards likely to come under or exceed 21; for

example, if those in hand make 14 exactly, it is 7 to 6 that the one next drawn does not make the number of points above 21, but if the points be 15, it is 7 to 6 against that hand; yet it would not therefore always be prudent to stand at 15, for as the ace may be calculated both ways, it is rather above an even bet that the adversary's two first cards amount to more than 14. A natural Vingt-un may be expected once in seven coups when two, and twice in seven when four people play, and so on according to the number of players.

All Fours.

This game, usually played by two people, sometimes by four, with a complete pack, derives its name from the four chances therein, for each of which a point is scored, namely, *high*, the best trump out; *low*, the smallest trump dealt; *jack*, the knave of trumps; *game*, the majority of pips reckoned from such of the following cards as the respective players have in their tricks, viz.: every ace is counted as 4; king, 3; queen, 2; knave, 1; and ten for 10. Low is always scored by the person to whom it was dealt; but jack being the property of whoever can win or save it, the possessor is permitted to revoke and trump with that card and when turned up as trump the dealer scores; it is also allowable for the player who lays down a high or low trump to inquire at the time whether the same be high or low.

After cutting for deal, at which either the highest or lowest card wins, as previously fixed, six cards are to be given to each player, either by three or one at a time, and the thirteenth turned up for trump; then if the eldest does not like his card, he may, for once in a hand, say, *I beg*, when the dealer must either give a point or three more cards to each, and turn up the seventh for trump; but if that should prove of the same suit as the first turned up, then three cards more are to be given, and so on till a different suit occurs. The cards rank as at Whist, and each player should always strive to secure his own tens and court-cards, to take those of the adversary, to obtain which, except when commanding cards are held, it is usual to play

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of the deal into the pool. The game goes on in this way until the pool is taken by some one of the players, when the next hand is *bold stand*, and is dealt and played as first described. Sometimes *club-law* is introduced, when all must play when a Club happens to be turned trump.

VINGT-UN.

VINGT-UN (twenty-one) may be played by two or more players: about six or eight is the best number. The cards bear the same respective values as in Cribbage. The Tens and court-cards are each reckoned for ten; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

Having shuffled the pack, the deal must be determined by giving each player a single card, and the one receiving the lowest deals. The players then make their bets, and the cards having been shuffled and cut, the dealer holds the pack face downwards, and, taking the top card (*i. e.*, "burnt card"), places it on the bottom of the pack, back outwards, and then immediately proceeds to give a single card to each player, and one to himself, all face downwards. Having done this, he distributes a second card in like manner, beginning with the elder hand, or left-hand neighbor. The players then examine their hands, and the dealer looks at his two cards, and if either of them should have a "*natural*," that is, an Ace and a tenth card, he immediately exposes his hand, and receives from the dealer double the amount of his stake. If the dealer should have a "natural," he immediately shows it, and receives double from each player, according to their individual stakes. The cards are then all thrown up and another deal made, as before; but, should the dealer not have a "natural," he proceeds with the game by asking each one in succession if he wishes to have another card, or stand on the two he has. The usual phrase is, "Are you content?" If the elder hand is content with his hand, he says, "Content," and places his cards on the table, face downwards, to await the result of the dealer's own cards. If he wants one or more cards he says so, and the dealer gives him from the top of the pack as many as he requires, dealing them face up, as they must remain. If the value of the cards exceed twenty-one in number when added together, the player is said to be "*burst*," in which case he must throw his cards into the centre of the table, and deliver his stake to the dealer. But if the pips and Tens on all his cards make, when added up, twenty-one, or less, and he is "content," he places his money upon his cards, and awaits the events of the round. And so with each player till all are served. The dealer then lays his own cards, face upwards, on the table. He, too, has the privilege of taking other cards from the pack, should the number be not near enough to twenty-one to allow him to stand. When he is satisfied with his hand he says,

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"I stand," and all the players face their cards on the table. Should the dealer overdraw, he must pay each and all of the players the amount of their bets, excepting those who have overdrawn themselves. To all those whose hands are twenty-one, or nearer to twenty-one than his own, he pays a stake equal to that placed upon the cards; while he receives the stakes from all whose hands are less than his own. Ties with the dealer stand off.

In this way the deal goes on till one of the players turns up a "natural," when he becomes dealer, and proceeds as before.

The dealer and each of the players has the privilege of making two hands, if the first two cards given him be of like character, as two Nines, Kings, Aces, &c. In this case each party pays and receives on both hands. (But, in thus playing a double hand, an ace on a tenth card, or vice versa, counts only for Vingt-un, and not for a "natural," which must consist of the first two cards received. See Law 8.)

Usually the whole pack is dealt out before the cards are shuffled, the cards belonging to each round remaining on the table till the whole pack is exhausted. Sometimes, when the party is large, two or more packs are mixed together and played in the same manner as a single pack.

The foregoing is a description of the game of Vingt-un as it is regularly played in this country. The following variations are sometimes introduced, but have no binding force, unless agreed upon by the players before commencing the game.

The *English* game is played as follows: Any player may look at the first card dealt to him previous to making a bet. The dealer has also the privilege of seeing his first card, and may insist on all the players doubling their stakes. This he commonly does if he has an Ace or a tenth card in the first round, or when the stakes are too low to please him. Ties pay to the dealer; but directly a player receives his second card he should look at it, and if he has obtained a "natural," he should declare it immediately. Thus he would get his Vingt-un before the dealer had received his second card, and would therefore be entitled to be instantly paid double stakes, even though the dealer himself were fortunate enough to get a "natural."

Another variation is played thus: the dealer has the privilege of looking for the *brulet* at the commencement of each deal. The *brulet* consists of the top and bottom cards of the pack after it has been shuffled and cut. If a "natural" occurs in the *brulet*, the dealer receives double stakes from all the players except the ties, from which he takes singles. Of course he must not declare his "natural" till all the players have staked. But if he take the *brulet* he is not compelled to stand upon it; but after he has dealt all the players as many cards as they demand, he may add to his own pair as many as he thinks fit.

In other companies the "natural" receives double stakes from all the players, and treble from the dealer—a plan that is apt to make the game a little too exciting, especially when counters represent cash.

The following is another way in which the game is sometimes played:

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each player whose cards are under twenty-one pays one stake into the pool; those who overdraw pay two, and those who make just twenty-one, in three or more cards, pay nothing. The pool accumulates thus till some one has a "natural" Vingt-un, which entitles him to the whole.

Another mode, which is quite modern, and often played by sporting men, is, for the dealer to expose his own hand, by dealing his cards face up. This gives the player the advantage of knowing the strength of the dealer's hand, so that he can stand or draw accordingly.

TECHNICAL TERMS USED IN VINGT-UN.

Burnt Card.—After the dealer has shuffled and cut the pack, he must, before dealing, take the top card and place it on the bottom of the pack, back outwards. This card is called the burnt card.

Tenth Cards.—The court-cards and Tens of each suit all count for ten, as in Cribbage, and are called tenth cards.

Natural.—If the first two cards dealt to any player be an Ace and any "tenth card," these, being exactly twenty-one, make a Natural Vingt-un. (*See Splits*).

Acquired Vingt-un.—When the first two cards dealt to a player be less than twenty-one, and, on calling for one or more cards, he obtain such as make his hand exactly twenty-one, this is called an Acquired Vingt-un.

Splits.—If the two cards dealt to a player should be pairs, he may, if he wish, lay them separately on the table, and use them as the first cards of two hands, and bet on each, but it must be borne in mind that he cannot have a "natural" on either hand, as he has already received two cards from the dealer.

Burst.—When a player, in drawing cards, has the misfortune to count more than twenty-one in his hand, it is said to be burst.

Content.—A term used when a player has received as many cards as he wishes, after having called for more cards from the dealer.

Pips.—The number of spots on the face of a card.

THE LAWS OF VINGT-UN

1. The first deal must be determined by giving a single card to each player—the lowest deals; and Ace is lowest.

2. As in all games, when money is involved, the dealer has the right to the last shuffle and cut, which being done, he takes the top card and places it on the bottom of the pack, *back outwards*. This is called the "*burnt card.*"

3. The two original cards dealt must remain face down, but those drawn must remain face up, and when the player is "content" he must place his stake upon his cards.

4. All bets must be made before the first card is dealt.

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5. In case of a misdeal, the stakes must be withdrawn and the cards dealt over again.

6. The holder of a "natural," after the first deal, is entitled to the deal.

7. The dealer is at any time allowed to sell, and any player to purchase, the deal. The dealer may also pass the deal to any one desirous of having it

8. The "natural" must consist only of an Ace and a tenth card, *dealt in the first two rounds*. In the case of double or treble hands, an Ace and a tenth card form "acquired" and not "natural" Vingt-uns, and receive or pay only single stakes.

9. The player who overdraws must immediately declare the fact, and pay his stake to the dealer.

10. Ties stand off.

11. No stake can be withdrawn, added to, or lessened, after it has been once laid on the card; but it must be allowed to remain till the dealer declares he stands.

12. No stake higher than that agreed to at the commencement of the game is allowed.

13. The occurrence of a "natural" during the first deal does not cause its forfeiture, the dealer being allowed to exhaust the pack.

MISTIGRIS.

This is a variety of the game of Draw Poker, sometimes called Fifty-Three Deck Poker. Mistigris is a name given to the blank card accompanying every pack; the player holding it has the right to call it what he chooses. For example: A *pair* with Mistigris becomes *triplets*; two pairs and Mistigris make a *full hand*; *triplets* with Mistigris are the same as *fours*; four of a suit filled with Mistigris constitute a *flush*, and, when straights are played, a sequence of four cards with Mistigris count as a *straight*.

In all other respects, this game is played in the same manner as Draw Poker, and is governed by the same laws.

THIRTY-ONE.

The Germans call this game "Schnautz." It is played with an entire pack of cards, and by any number of persons under seventeen Each player puts an equal stake into the pool; three cards are dealt to each, and a spare hand, which is turned up on the table. The object of the game is to get thirty-one, or as near it as possible, reckon-

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1885.

VINGT-UN.

Vingt-un may be played by any number of persons. A pack of fifty-two cards is required.

The tens and court cards are each reckoned for ten, and the other cards according to the pips on each; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

DEALING AND BETTING.

The deal having been determined, and the cards properly shuffled and cut, the players make their stakes, which must not exceed the limit agreed on.

It is sometimes agreed that the players may all look at the first card dealt to them before making their bets. The dealer also has the privilege of seeing his first card, and may insist on all the players doubling their bets. (*See* English Vingt-un, page 242.)

The dealer, holding the pack face downwards, takes the top card and places it upon the bottom of the pack, *back downwards*. This is called the *burnt card*, or *brulet*.

The dealer then delivers one card, face downwards, to each player in rotation, beginning to his left; he then repeats this operation, thus giving each player two cards.

CONDUCTING THE GAME.

The players all examine their hands, and the dealer asks each in rotation, the eldest hand first, whether he will take any cards. The usual phrase is, "Are you content?" If the player is satisfied with his hand, he says, "Content," and places his hand upon the table, face downwards. If the player is not content he calls for a card. The dealer then deals him a card face upwards on the table, and again asks "Are you content?" This operation is continued until the player is satisfied, and so on until each is served.

If the hand of a player who takes a card or cards amounts, including the cards drawn, to more than twenty-one, he throws his hand face downwards in the middle of the table, and delivers his stake to the dealer.

After all the players have stood or drawn, the dealer turns his hand face upwards on the table, and either stands or draws. If he overdraws he pays, according to the sums staked, to each player who has not over-

cards are re-cut and the dealer deals again. If, however, the pack be faulty; or if either of the other players touch their cards; or if a card is faced in the pack, the dealer deals again without penalty. If the dealer expose any of his own cards the deal stands good.

PASSING AND ANNOUNCING.

6. If a player once decline to announce, he cannot afterwards do so in that hand; this does not debar him from assisting as whister if called on.

7. If a player make an announcement which is superseded by another, he can, when his turn comes round again, augment his bid.

8. If all pass, the hand is played without any trump, and the player who takes the least number of tricks wins the pool.

REVOKING.

9. Each player must follow suit if possible, and if a suit is led and any one of the players having a card of the same suit shall play one of another suit to it, and the trick has been turned and quitted, that constitutes a revoke; but the error being discovered before the trick is quitted, or before the party having so played a wrong suit shall play again, the penalty only amounts to the card being treated as *exposed* and being liable to be called.

10. If a player make a revoke, his side forfeits three tricks to the opposing side.

LEADING AND PLAYING OUT OF TURN.

11. Should either of the players opposing the bidder *lead* a card out of turn, upon the demand of the bidder the card must be taken up, and it may be called any time during the hand; and the bidder may at his option call for a lead of any suit from the player whose proper lead it is. If the player called upon to lead a suit have none of the suit, the penalty is paid.

12. Should either of the players opposed to the bidder *play* a card out of turn, the bidder may call upon him to take his card up and play one of a lower rank, provided it does not cause a revoke. When a card is played out of turn, no player opposed to the bidder may win that trick.

EXPOSED CARDS.

13. All exposed cards are liable to be called, and must be left face upwards on the table. (*See* Laws of Whist, 46, etc., page 17.)

14. Being called on to play any suit or the highest or the lowest of any suit you may hold, should you fail to do so, you have made a revoke, and become liable to the penalty.

VINGT-UN.

Vingt-un may be played by any number of persons. A pack of fifty-two cards is required.

The tens and court cards are each reckoned for ten, and the other cards according to the pips on each; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

DEALING AND BETTING.

The deal having been determined, and the cards properly shuffled and cut, the players make their stakes, which must not exceed the limit agreed on.

It is sometimes agreed that the players may all look at the first card dealt to them before making their bets. The dealer also has the privilege of seeing his first card, and may insist on all the players doubling their bets. (*See* English Vingt-un, page 242.)

The dealer, holding the pack face downwards, takes the top card and places it upon the bottom of the pack, *back downwards*. This is called the *burnt card*, or *brulet*.

The dealer then delivers one card, face downwards, to each player in rotation, beginning to his left; he then repeats this operation, thus giving each player two cards.

CONDUCTING THE GAME.

The players all examine their hands, and the dealer asks each in rotation, the eldest hand first, whether he will take any cards. The usual phrase is, "Are you content?" If the player is satisfied with his hand, he says, "Content," and places his hand upon the table, face downwards. If the player is not content he calls for a card. The dealer then deals him a card face upwards on the table, and again asks "Are you content?" This operation is continued until the player is satisfied, and so on until each is served.

If the hand of a player who takes a card or cards amounts, including the cards drawn, to more than twenty-one, he throws his hand face downwards in the middle of the table, and delivers his stake to the dealer.

After all the players have stood or drawn, the dealer turns his hand face upwards on the table, and either stands or draws. If he overdraws he pays, according to the sums staked, to each player who has not over-

drawn. If he stands, or draws so that his hand does not exceed twenty one, he receives from or pays to each player in rotation, the one winning whose cards amount most nearly to twenty-one. Ties stand off. Players who have to pay the dealer throw their cards in the middle of the table without showing them. Players who claim anything from the dealer show their cards. When a player overdraws he is said to be *burst.*

If a player has an Ace and a court card dealt him, which reckons twenty-one (called a *natural Vingt-un),* he turns his hand face upwards on the table and receives double his stake from the dealer. The dealer, however, need not pay until he has looked at his own cards, as, if he also has a natural, it is a stand off. When the dealer has a natural, he similarly receives (except from naturals). No one draws, there being no chance of beating the dealer's hand.

If a player or the dealer has a pair dealt him originally, he may stake and draw on each card separately or not, as he pleases. If he goes on each, he separates the cards and puts a stake on each, and when it comes his turn to draw he says "I go on each." In this case each party pays and receives on both hands. But if a natural occur in a double hand, the holder receives only a single stake on each, because to obtain a natural the first two cards only may be counted.

When the hand is over, the same dealer continues to deal afresh from the portion of the pack that remains undealt. The cards previously dealt are collected and shuffled (or *made)* by the player to the right of the dealer, called the *pone.* At the end of each deal the pone similarly *makes* all the used cards, that they may be ready for the dealer when the pack is exhausted. When the dealer comes to the last, that is, the burnt card, he throws it face downwards into the middle of the table, and the *pone* cuts the cards already made, for the dealer to go on with.

The first natural puts the dealer out, but it is often agreed that the deal shall consist of a certain number of rounds; for example, that it shall be over when the pack has been twice dealt out. When this rule obtains, the game is often played with two packs of cards shuffled together, the deal being over when the whole of the two packs has been dealt out.

CHANCES OF THE GAME.

The odds at Vingt-un of course depend upon the average number of pips and Tens on two cards under twenty-one. For example: If the two cards in hand make fourteen, it is seven to six that the one next drawn does not make the number of points above twenty-one; but, if the points be fifteen, it is seven to six against that hand. Yet it would

not, therefore, always be prudent to stand at fifteen; for, as the Ace may be calculated both ways, it is rather an even bet that the dealer's first two cards amount to more than fourteen. A natural Vingt-un may be expected once in eight deals, when two, and twice in eight, when four, play, and so on, according to the number of players. The principal advantage to the dealer arises from the fact that all bursts have to pay, irrespective of his own hand.

LAWS OF VINGT-UN.

DETERMINATION OF DEAL.

1. When the players have taken their seats, one of them must be deputed to shuffle the pack, and (after having it cut by the player to his right) to deal a card face upwards to each player in rotation, beginning to his left. The player to whom an Ace first comes has the deal.

SHUFFLING AND CUTTING.

2. When the deal has commenced, only the dealer and the pone have a right to shuffle. The dealer has a right to shuffle last. The cards remaining undealt may not be shuffled, but only those presented to the dealer by the pone when the pack is exhausted.

3. In cutting at least four cards must be separated, and at least four left on the bottom packet.

4. If a card is exposed in cutting or in re-uniting the cut packets, or if there is any confusion of the cards, the pack must be re-shuffled and cut again.

DEALING.

5. After the cards have been cut by the pone, and before the deal is commenced, the dealer must take the top card from the pack and place it on the bottom of the same, back downwards. This card is called the burnt card, or brulet. The cards must be dealt face downwards, one at a time to each player in rotation, beginning with the player to the dealer's left.

6. If two cards are dealt together to one player, the mistake may be rectified before a third card is dealt. But if a third card is dealt before the error is discovered, the player who has the surplus card, having looked at his hand, must reject one card and give it, face downwards, to the pone.

7. If the dealer deals himself two cards together and then deals a third, the pone must draw a card at random from the dealer's hand.

8. If a card is exposed in dealing, the player may keep it or reject it; if he reject it, the rejected card is given to the pone. If the dealer expose one of his own cards, he must keep it.

9. Drawn cards must be dealt one at a time, face upwards on the table. Each player in rotation must be content before the next can draw a card. In drawing separately on pair cards, the player must be content on one card before drawing on another.

10. If two drawn cards are dealt together, the player may keep either or both. If he keeps only one, he cannot draw another card. The rejected card is given to the pone.

11. If the dealer in drawing gives himself two cards together, he must keep them both.

12. If a player is missed in dealing or drawing, he may have his hand completed from the pack, or may throw it up.

13. If the dealer in dealing miss himself and a player draws cards before the error is discovered, the dealer must pay to each player the amount of his stake, and double to a natural. If the error be discovered before any cards are drawn, the dealer may complete his hand from the top of the pack, and there is no penalty.

14. The burnt card must not be dealt or drawn.

15. If there is a faced card in the pack it must be rejected and given to the pone.

16. Should the dealer sell his deal, the buyer deals, but without changing his seat.

17. If a player (not the dealer) holds a natural Vingt-un, it puts the dealer out. The holder of a natural has the next deal, except it is the first hand of the deal, or the dealer also has a natural.

[Sometimes by agreement the dealer has a given number of deals; for example, he deals the pack twice out. If, when the pack is a second time nearly exhausted, he has cards left with which to commence a deal, he is entitled to complete the deal.]

STAKING AND PAYING.

18. Each player is bound to place his stake in front of him, distinct from his other counters or coins, before a card is dealt. When content with his hand, he puts it face downwards on the table, and places his stake on top of it. No stake can be withdrawn, added to, or lessened after it has been once made, but must be allowed to remain until the dealer declares he stands. No stake higher than that agreed to at the commencement of the game is allowed.

[Sometimes the English custom of staking is adopted, when it is agreed that each player may look at the first card dealt to him before making a bet. The

dealer also has the same privilege, and may insist on all the players doubling their stakes. *See* English Vingt-un.]

19. A player or dealer having a pair dealt may draw and stake on each separately. Tenth cards only pair with tenth cards of the same denomination, that is, Kings with Kings, and so on (*see* Law 9).

[In England the custom is as follows: If the first card drawn, or if the first and second cards are of the same denomination as the pair first dealt and split, the player may go on three or on all four cards.]

20. If a player draws on cards separately which do not pair, he pays the dealer on each hand.

21. When the dealer and a player tie, the two cancel or stand off, and neither receives from or pays to the other.

22. Overdraws pay the dealer at once. The player who overdraws, throws up his cards without exposing them, and the pone should not look at them.

23. When all the players have stood or drawn, the dealer must expose his hand face upwards on the table.

24. If the dealer overdraws, he pays all the players except those who have already overdrawn.

25. A player having a claim on the dealer, is bound to expose his hand to satisfy the dealer of the correctness of his claim. If a player mixes his hand with those thrown up without first exposing it, he must pay the dealer.

26. A natural Vingt-un must consist of an Ace and a tenth card dealt in the first two rounds. The dealer pays to and receives from a player for a natural, unless a tie should occur. In case of a double hand (*see* Law 19), an Ace and a tenth card form acquired and not natural Vingt-uns, and receive and pay only single stakes.

THE PONE.

27. The player to the right of the dealer must act as pone, and must collect and shuffle the used cards (called making them). When the pack is exhausted, he must present the made cards to the dealer and cut them.

AFTERCOMERS.

28. The place of an aftercomer is decided by the pone dealing, from the made cards, one card between each of the players, commencing to his left. The aftercomer takes the place where the first Ace falls, or, if there be no Ace dealt in the round, where the highest card falls.

ENGLISH VINGT-UN.

The *English* game is played as follows: Any player may look at the first card dealt to him previous to making a bet. The dealer has also the privilege of seeing his first card, and may insist on all the players doubling their stakes, in which case he pays double, if he loses. This he commonly does if he has an Ace or a tenth card in the first round, or when the stakes are too low to please him. Ties pay to the dealer; but when the dealer and another player both have a natural dealt in the same hand it becomes a stand off, the principle being that it is contrary to all card games for the best possible hand to lose. If any player draws cards that make his hand amount to twenty-one exactly (a *drawn Vingt-un*), he receives double his stake; and, similarly, if the dealer has a drawn Vingt-un, he receives double the players' stakes.

ROUNCE.

Rounce may be played by any number of persons not exceeding nine; but five or seven make a good game.

The game is played with a pack of fifty-two cards, which rank as at Whist.

DEALING.

One of the players must be deputed to shuffle the pack, and (after having it cut by the player to his right) to deal a card face upwards to each player in rotation, beginning to his left. The player to whom the lowest card is dealt has the deal.

After the cards have been shuffled and cut, the dealer gives five cards to each player in rotation, beginning with the player to his left, by alternate rounds of two and three at a time, or *vice versâ*. He also deals an extra hand of six cards in the centre of the table, called *dumby*.

The dumby must be dealt before the dealer takes the full complement of cards himself, and should be filled immediately preceding his own hand. When the cards have been dealt in the manner described, the dealer turns up the top card on the pack, which is the trump. After the first hand, the deal passes to the left.

DECLARING TO PLAY.

After the deal has been completed, each player in rotation, beginning

with the eldest hand, looks at his cards, and declares whether he will play his hand, take dumby, or resign. If he is satisfied with his cards, he says "I play," if he resigns, he says "I pass," and throws down his cards. If a player resigns, his interest in the pool ceases, unless he elects to exchange his hand for dumby.

The eldest hand has the first privilege of taking dumby, and if he elects to do so, he must place his hand in the centre of the table, face down, and discard one card from his new hand. If he declines to take dumby, then the option passes to the next player to his left, and so on in succession to the dealer.

Whoever takes dumby must play it. Any other player who thinks he cannot take a trick, may decline to play his hand.

When all refuse to play, then the player to the *right* of the dealer must play his hand, take dumby, or, in default of doing either, give the dealer five points.

The dealer, when he elects to play, may discard any card in his hand, and substitute for it the card turned up for trump.

PLAYING THE HAND.

After all have declared, the player first in hand of those who declare to play leads a card, and each person in rotation (to the left) plays a card to the lead; the cards thus played constitute a trick. The trick is won by the highest card of the suit led, or, if trumped, by the highest trump played. The cards rank as at Whist.

Suit must be followed; but if this is not possible, a player may trump or not, at his option.

The winner of a trick must lead a trump, if he can; if, however, he holds no trump, he may lead any card he chooses.

SCORING.

At the beginning of the game each player commences with fifteen points. The player who is the first to reduce his score to nothing wins the game.

The score is marked by means of three crosses, in the following manner: ✕✕✕. Each cross represents five points. When a player makes one point he rubs out the centre of the cross, thus: ✕, and when he makes another point he rubs out one of the remaining portions of the cross, and so on, until all are wiped out.

Each trick taken in play counts one point, and if a player fail to take a trick after entering to play his hand, he is *rounced*, that is, five points are added to his score.

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VINGT-UN.

VINGT-UN (twenty-one) may be played by two or more players; about six or eight is the best number. The cards bear the same respective values as in Cribbage. The tens and court-cards are each reckoned for ten; but *the ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

Having determined the deal by lot—which may be done simply by shuffling the pack, and then giving each player a card, the first possessor of the knave having the deal—counters or small stakes having been determined on, the dealer holds the pack with their faces beneath, and proceeds to give a single card to each player, and one to himself, all face downward. Each player then places his stake on his card, and the dealer distributes a second card all round, beginning in each case with the elder hand—his left-hand neighbor. The players then examine their hands, and the dealer looks at his own two cards, when, if he thinks fit, he may "challenge the board," receiving or paying from all whose hands are less or more than his own, up to twenty. Failing, however, to do this, he asks each one in succession if he wishes to have another card, or stand on the two he has. The usual phrase is—"Do you stand?" If the elder hand is content with his hand, he says "Content," and places his cards on the table, face downward, to await the result of the dealer's own cards. If he wants one or more cards he says so, and the dealer gives him from the top of the pack as many as he requires. If the court-cards, tens, etc., exceed twenty-one in number when added together, the player is said to have "over-drawn," in which case he must throw his cards into the centre of the table, and deliver his stake to the dealer. But if the pips and tens on all his cards make, when added up, twenty-one or less, he puts them face downward on the table, and waits the event of the round. And so with each player till all are served. The dealer then lays his own cards face upward on the table. He, too, has the privilege of taking other cards from the pack, should the number be not near enough to twenty-one to allow him to stand. When

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he is satisfied with his hand, he says, "I stand," and all the players face their cards on the table. To all those whose hands are twenty-one or nearer to twenty-one than his own, he pays a stake equal to that originally placed on the single card: while he receives the stakes from all whose hands are less in number than his own, *including ties*. But to any player or players having an ace and a tenth card—which is termed a "natural Vingt-un"—he pays double stakes. The "natural" must always consist of the two cards first dealt. Should, however, the dealer himself have a "natural," he receives double stakes from all the players, and single from the ties. In this way the deal goes on till one of the players turns up a "natural," when he becomes dealer, and proceeds as before.

Twenty-one, whenever it consists of an ace and a tenth card, dealt in the first two rounds, entitles the player to double stakes from the dealer; and similarly from the players to the dealer, when the latter happens to get a natural. In the latter instance, the round is at an end on the dealer taking his second card, and he receives double stakes from all the players without the necessity of giving them a third card or more.

Ties pay to the dealer the stake ventured; but directly the player receives his second card he should look at it, and if he has obtained a natural he should declare it immediately. Thus he would get his vingt-un before the dealer had received his second card, and would therefore be entitled to be instantly paid, even though the dealer himself were fortunate enough to get an ace on his ten, or a tenth card on his ace.

The dealer has also the privilege of insisting on all the players doubling their stakes. This he commonly does if he has an ace or a tenth card in the first round, or when the stakes are too low to please him.

It is the duty of the younger hand to gather up the cards at the conclusion of each round in readiness for the next deal. In some companies the whole pack is dealt out before the cards are shuffled, the cards belonging to each round remaining on the table till the whole pack is exhausted. Generally, however, the pack is gathered up at the end of each deal, shuffled by the player at the left of the dealer, and cut by the player at his right. Sometimes, when the party is large, two packs are in use at the same time—one being shuffled and cut while the other is being dealt; or the two may be mixed together and played in the same manner as a single pack.

The dealer and each of the players has the privilege of making two hands, if the first two cards given him be of like character—as two nines, kings, aces, etc. In this case each party pays and receives on both hands. But in the case of a "natural" occurring in a doubled hand, the holder

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receives only a single stake on each, because to obtain a "natural" the first two cards only may be counted.

Again: The dealer has the privilege of looking for the *brulet* at the commencement of each deal. The *brulet* consists of the top and bottom cards of the pack after it has been shuffled and cut. If a "natural" occurs in the brulet, the dealer receives double stakes from all the players except the ties, from which he takes singles. Of course he must not declare his "natural" till all the players have staked. But if he take the brulet, he is not compelled to stand upon it; but after he has dealt all the players as many cards as they demand, he may add to his own pair as many as he thinks fit.

The odds at Vingt-un of course depend upon the average number of pips and tens on two cards under twenty-one.

If the two cards in hand make fourteen, it is seven to six that the one next drawn does not make the number of points above twenty-one; but if the points be fifteen, it is seven to six against that hand. Yet it would not, therefore, always be prudent to stand at fifteen, for as the ace may be calculated both ways, it is rather above an even bet that the dealer's two first cards amount to more than fourteen. A "natural" vingt-un may be expected once in eight coups, when two, and twice in eight, when four people play, and so on, according to the number of players.

This is Vingt-un as most generally played; but in some companies the "natural" receives double stakes from all the players, and treble from the dealer.

One of the great advantages possessed by the dealer is the taking of all stakes on the ties. The game is therefore played occasionally with a provision that ties are exempt from payment. Again, it is generally admitted that the occurrence of a "natural" during the first deal does not cause its forfeiture, the dealer being allowed to continue his deal. This and other regulations must, however, be made by agreement among the players at the commencement of the game.

RULES OF VINGT-UN.

The rules of Vingt-un are by no means fixed; we give them, however, as the game is generally played.—EDITOR.)

1. The first deal must be determined by chance—as by cutting the cards, obtaining the first knave, etc.

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2. Previous to the deal the youngest hand shuffles, and the eldest hand cuts.

3. The stake must be placed on the first card previous to the second round, and allowed to remain till the round is completed and the dealer exposes his cards.

4. In case of a misdeal, the stakes must be withdrawn and the cards dealt over again.

5. All ties pay to the dealer, except in the case of a "natural" being declared previous to the dealer obtaining his second card. Then the holder of the "natural" is entitled to receive double stakes immediately, before another card is played.

6. The holder of a "natural," after the first round, is entitled to the deal.

7. The dealer is at any time allowed to sell, and any player to purchase, the deal. The dealer may also pass the deal to any one desirous of having it.

8. The "natural" must consist only of an ace and a tenth card *dealt in the first two rounds*. In the case of double or treble hands, an ace and a tenth card form "acquired" and not "natural" vingt-uns, and receive or pay only single stakes.

(The *brulet*, or drawing a card from top and bottom, is rarely played in the United States.—EDITOR.)

9. The player who over-draws must immediately declare the fact, and pay his stake to the dealer.

10. In taking brulet the dealer is compelled to retain those two cards, but he may add to them if he wishes after all the players are served.

11. No stake can be withdrawn, added to, or lessened, after it has been once laid on the card; but it must be allowed to remain till the dealer declares he stands.

12. No stake higher than that agreed to at the commencement of the game is allowed.

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If either ace, king, queen, or knave, happens to be the turned-up trump, the dealer takes whatever is deposited on that head; but when Pope is turned up, the dealer is entitled both to that and the game, besides a stake for every card dealt to each player. Unless the game is determined by Pope being turned up, the eldest hand begins by playing out as many cards as possible; first the stops, then Pope if he has it, and afterwards the lowest card of his longest suit, particularly an ace, for that never can be led through; the other players are to follow when they can, in sequence of the same suit, till a stop occurs, and the party having the said stop, thereby becomes eldest-hand, and is to lead accordingly, and so on, until some person parts with all his cards, by which he wins the pool (game,) and becomes entitled besides to a stake for every card not played by the others, except from any one holding Pope, which excuses him from paying; but if Pope has been played, then the party having held it is not excused, having already received the stakes for that card.

King and queen form what is denominated matrimony, queen and knave make intrigue, when in the same hand; but neither they, nor ace, king, queen, knave, or pope, entitle the holder to the stakes deposited thereon, unless played out, and no claim can be allowed after the board is dressed for the succeeding deal; but in all such cases the stakes are to remain for future determination.

This game only requires a little attention to recollect what stops have been made in the course of the same; as for instance, if a player begins by laying down the eight of clubs, then the seven in another hand forms a stop, whenever that suit is led from any lower card, or the holder when eldest may safely lay it down in order to clear his hand.

VINGT-UN.

VINGT-UN, or twenty-one, is very similar to Quinze, and may be played by two or more people. It is essentially a family game, and when played as such, the stakes are usually represented by counters, which may be of any value; say, sixpence the dozen, or more. It is common to limit the

stakes to be laid to a dozen of counters, or the amount in money which they represent. As the deal is advantageous, and often continues long with the same person, it is usual to determine it at the commencement by the first ace turned up, or any other mode that may be agreed upon.

The deal is retained by the person who commences, until a natural vingt-un occurs, when it passes to the next in rotation.* (The old mode of play, however, is, that in the case of a natural vingt-un the deal passes to the holder, and many still adhere to this custom. This item of the game must, therefore, be regulated by the custom of the table, or be previously agreed.) The pony or youngest hand should collect the cards that have been played, and shuffle them together ready for the dealer against the period when he shall have distributed the whole pack.

The dealer begins by giving two cards, one at a time, face downwards, to each player, including himself. After the first card has been dealt round, each places his stake upon it (which may, if he chooses, be as low as a single counter,) and then receives the second card; but the dealer, upon the stakes being all laid, and before proceeding with the deal, looks at his own card, and if he thinks proper (having perhaps an ace, ten, or court card,) he may double the stakes, which he announces by crying 'double.' He then distributes a second card to each, and lastly to himself. Should he chance to have a natural vingt-un, he declares it at once, before any more cards are dealt, and collects the stakes (which, by a vingt-un, are doubled,) but should he have drawn less than 21, the game proceeds thus:—The dealer enquires of each player in rotation, beginning with the eldest hand on the left, whether he stands, or wishes for another card, which, if required, must be given from off the top (face upwards) of the pack, and afterwards another, or more, if requested, till the points of the additional card or cards, added to those dealt, exceed or make 21 exactly, or such a number less than 21, as the player may choose to stand upon; but when the points exceed 21, the player is technically said to have overdrawn, and his cards are to be thrown up forthwith, and the stake laid on them paid to the dealer. When the dealer has gone the

* Should a natural vingt-un occur in the first round it does not put out, the dealer being allowed a *misericorde*.

round of the table in this manner, he turns up his own cards to the view of the company, and should he have any number of points, between, say from 17 to 20, he usually "stands," that is, pits his cards against the other players. Those under his number, as well as ties,* pay; those above it receive. If the dealer should have only 14 or 15 points in his first hand, the chances would be against him, were he to stand on so small a number. He would therefore draw another card, and should this be a very low one (an ace or a deuce,) and he have reason to suppose, by the extra cards dealt round, that he had to contest high numbers, he would draw again, and if he obtained 19 or 20 points would then probably win on more than he loses; the average of chances being in his favor; if by drawing he should happen to make up 21, he would receive double from all, excepting from the ties and those who had already thrown up; if more than 21, he would have to pay all who stand, paying the vingt-uns double.

Should either the dealer or a player happen to turn up two cards of the same denomination, for instance, two aces, deuces, or any other number, or two kings, two queens, &c., he would have the choice of going on both, and should the next card he draws be a triplicate, he may go on all three. If the cards happen to be aces, which count either as 1 or 11, at the option of the player, and if by great luck he should successively draw three tens, or Court cards, thus making three natural vingt-uns, he would obtain double stakes upon each, therefore six times as much as the stakes placed on the various hands, and should he, on laying his first card, have cried "double," the stakes payable, would, in such case, be twice doubled, therefore upon the three cards twelve-fold. This is an extreme case, cited merely to show the nature of the game. It commonly happens, however, that when either dealer or player "goes" on several cards, he loses on one or more, and thus neutralizes his gains. Players, as already intimated, have the same right of "going" on several cards, as the dealer.

When any player has a vingt-un, and the dealer not, then the player wins double stakes from him; in other cases, except a natural vingt-un happens, the dealer pays single stakes

* Ties are the principal advantage of the dealer.

to all whose numbers under 21 are higher than his own, and receives from those who have lower numbers; players who have similar numbers to the dealer pay; and when the dealer draws more than 21, he overdraws, and has to pay to all who have not thrown up, as already stated.

Twenty-one, whensoever dealt in the first two cards, is styled a Natural Vingt-un, and should be declared immediately. Hoyle says that this entitles the possessor to the deal, besides double stakes from all the players, unless there shall be more than one natural vingt-un, in which case the younger hand or hands so having the same, are exempted from paying to the eldest. But this rule, like that mentioned at page 318, is nearly obsolete. It is not now customary to allow any except the dealer to take double stakes from the company, in respect to his natural vingt-un.

One of the first thoughts of the dealer, after the cards have been cut, should be to look for BRULET, which is a natural vingt-un formed by the bottom and top card, when they happen to be an ace and tenth card. The card or cards looked at must be thrown out, and mixed with those collected by the pony. Brulet either clears the board of the stakes laid, (usually one or two counters levied on each player, at the commencement of every game, and collected into a tray,) or takes the amount of the limit (perhaps 6*d.*) from each, as may be agreed.

The deal, it should be observed, may be sold to the best bidder, and, as it is undoubtedly of some advantage, a buyer will generally be found. But should a timid player object to the deal, and no buyer be found, he may decline it, and so let it pass to the next.

N. B. An ace, as already intimated, may be reckoned either as 11 or 1: every court-card is counted as 10, and the rest of the pack according to their points.

The odds of this game merely depend upon the average quantity of cards likely to come under or exceed 21; for example, if those in hand make 14 exactly, it is 7 to 6 that the one next drawn does not make the number of points above 21, but if the points be 15, it is 7 to 6 against that hand; yet it would not therefore always be prudent to stand at 15, for as the ace may be calculated both ways, it is rather above an even bet that the adversary's two first cards amount to more

than 14. A natural vingt-un may be expected once in 7 coups when two, and twice in 7, when four people play, and so on according to the number of players.

LANSQUENET.

THIS game may be played by almost any number of people, although only one pack of cards is used at a time, during each deal.* The dealer, who has rather an advantage, begins by shuffling the cards, and having them cut by any other person of the party; after which he deals out two cards on his left-hand, turning them up; then one for himself, and a fourth, which he places in the middle of the table for the company, called the *rejouissance* card. Upon this card any, or all of the company, except the dealer, may put their money, either a limited or unlimited sum, as may be agreed on, which the dealer is obliged to answer, by staking a sum equal to the whole that is put upon it by different persons. He continues dealing, and turning the cards upwards, one by one, till two of a sort appear; for instance, two aces, two deuces, &c. which in order to separate, and that no person may mistake for single cards, he places on each side of his own card; and as often as two, three, or the fourth card of a sort comes up, he always places them, as before said, on each side of his own. Any single card the company has a right to take and put their money upon, unless the dealer's own card happens to be double, which often occurs by this card being the same as one of the two cards which he first of all dealt out on his left-hand. Thus he continues dealing till he brings either their cards, or his own. As long as his own card remains undrawn he wins; and whichever card comes up first, loses. If he draws or deals out the two cards on his left, which are called the hand-cards, before his own, he is entitled to deal again; the advantage of which is no other, than being exempted from losing when he draws a similar card to his own, immediately after he has turned up one for himself.

* As the game is now played in France, four, and even more, packs of cards are mixed together.

Exhibit C

MEMORANDUM

To: Interested Parties

From: Matthew Newman, The Blue Sky Consulting Group

Date: May 22, 2025

Re: SRIA Regarding Proposed Cardroom Dealer Rotation and Blackjack Regulations

Summary

California law requires that proposed major regulations undergo an economic analysis to "assess the potential for adverse economic impact on California business enterprises and individuals."[1] Such an economic impact analysis is known as a "standardized regulatory impact assessment" or SRIA. The Government Code and California Code of Regulations provide the requirements for SRIAs. Specifically, any SRIA must identify "the underlying assumptions the agency used and the rationale and basis for those assumptions" and "the specific categories of individuals and business enterprises who would be affected," among other requirements.[2]

This memo presents an analysis of the December 2024 SRIA regarding proposed regulations affecting player-dealer rotation and Blackjack at California cardrooms as prepared by Berkeley Economic Advising and Research (BEAR).[3]

Based on this review we find that the BEAR SRIA does not provide an accurate assessment of the potential adverse economic impact on the state. The report contains numerous methodological errors and omissions which have the effect of understating the likely impact of the proposed regulations. Furthermore, the report fails to adequately provide the basis for the underlying assumptions relied upon, does not account for the adverse impact on the competitive advantages of the state's cardroom industry, and fails to address the impact on "specific categories of individuals and businesses" as required.

[1] California Government Code Section 11346.3.

[2] California Code of Regulations, Section 2002(b)(2) available at: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=3.5.&article=5..

[3] "BEAR Report" available at: https://oag.ca.gov/system/files/media/isor-appendix-d%20-revised-sria.pdf (accessed February 19, 2025).

Methodological Errors Result in Understated Economic Impacts

California Government Code Section 11346.3 states that "a state agency proposing to adopt… any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals" and shall assess the "competitive advantages or disadvantages for businesses currently doing business within the state." Methodological errors in the BEAR report have the effect of understating the likely economic impact of the proposed regulations, resulting in a SRIA that does not provide an accurate assessment of the "adverse economic impact" of the proposed regulations.

Omission of Cardroom and TPPPS Impacts

The BEAR report states that the imposition of the proposed changes to player-dealer rotation "will likely change gaming dramatically and it is expected that about half of players will leave cardrooms." Although the report asserts that cardrooms will experience a reduction in customers, the economic impacts of the proposed player-dealer regulations are limited to Third-Party Providers of Proposition Player Services (TPPPS), with no cardroom impacts presented. Specifically, the BEAR report asserts that the proposed regulation "eliminates 50% of TPPPPS revenue," an amount equal to $396 million in 2023, or half of the $794 million in total TPPPS revenue reported in the BEAR report.[4, 5] During the same year, however, the BEAR report shows cardroom gaming revenue of $1.356 billion. The BEAR report does not assume any reduction in this revenue stream resulting from the proposed player-dealer regulations, in spite of the fact that the report asserts that "about half of players will leave cardrooms."

Separately, the BEAR report assumes that the Blackjack regulations would result in a 50% decline in cardroom revenue, but no decline in TPPPS revenue. Specifically, the BEAR report states that "we assume that changes to currently approved Blackjack games could result in the elimination of revenues associated with these games."[6] The report further states that "we also assume however, that new games… and patron loyalty result in a 50% increase of other cardroom activities, partially offsetting the lost revenue from Blackjack games."[7] This results in an assumed 50% reduction in cardroom Blackjack gaming revenue. Specifically, the report concludes that "elimination of all Blackjack revenue from cardrooms with replacement of 50% of revenue from new games could represent a $68M cost to cardrooms" (emphasis added). In

[4] Note that the BEAR report refers to "TPPPPS" rather than what the Attorney General refers to as "TPPPS" (see https://oag.ca.gov/gambling/forms/forms_card). For purposes of this memorandum, we assume that the BEAR report's references to "TPPPPS" are in fact references to "TPPPS."

[5] BEAR, op.cit., p. 20.

[6] BEAR, op.cit., p. 21.

[7] Ibid.

this case (unlike the case of the player dealer rotation regulations) the report directly assumes a reduction in cardroom gaming revenue. However, the report assumes no reduction in TPPPS revenue. To the extent cardroom revenue from Blackjack declines, however, TPPPS revenue related to Blackjack would decline as well, likely by a similar proportion (i.e., 50% of TPPPS Blackjack revenue).

The report does not indicate why the proposed player-dealer regulations would only affect TPPPS revenues and the Blackjack regulations only cardroom revenues. In fact, each proposed regulation would likely impact both cardroom and TPPPS revenues.

As a result of omitting the impacts on cardrooms and TPPPS, respectively, the BEAR report significantly understates the likely impact of the proposed regulations.

Omission of Food and Beverage, Retail, and Hotel Revenues Results in Inaccurate Estimates

The BEAR report presents assumptions with respect to the impacts on TPPPS and cardroom revenues resulting from the proposed regulations. However, the report does not estimate any reduction in revenue from other, related sources, such as food and beverage sales, retail activity, and hotel revenues, although it acknowledges such impacts are likely. Specifically, the report states that, "impacts are not expected to be limited to the gaming-related operations but to indirectly affect a variety of associated attractions or appurtenant services including restaurants, bar, and hotels."[8] While these sources of revenue are not directly subject to the proposed regulations, any reduction in cardroom patronage would likely impact these revenues as well, as the report acknowledges. As with the failure to include both cardroom and TPPPS revenue in the analysis of the proposed regulations (as identified above), this omission has the effect of understating the overall economic impact of the proposed regulations.

Report's Interpretation Inconsistent with Proposed Regulation Text

The BEAR SRIA makes an important assumptions with respect to how the proposed regulations would be implemented by cardrooms and TPPPS that is at odds with the text of the proposed regulations. The result of this interpretation is lower estimated economic cost of the proposed regulations.

Specifically, the BEAR report assumes that cardrooms could contract with multiple TPPPS as a means of facilitating dealer rotation. The report states that, "the cardroom could contract with multiple TPPPPS to alternate the role of player-dealer in some agreed rotation from one TPPPPS to another."[9] However, the proposed regulations state that "No more than one third-party

[8] BEAR, op. cit., p. 16.

[9] BEAR, op. cit., p. 15.

provider of proposition player services shall be permitted to offer services at a table where a game that features a rotating player-dealer position is being offered for play." [10]

The BEAR report does not identify the relationship between these presumed cardroom response to the proposed regulations and the assumption with respect to the reduction in cardroom and TPPPS revenue. However, the interpretation made by the report's authors would have the effect of minimizing the impact of the proposed regulations on cardroom operations and revenues. Therefore, if an interpretation consistent with the text of the regulations were used instead, the assumed impact of the regulations would be greater than the value presented in the report. As a result, the economic impact presented in the report understates the actual impact using a more appropriate interpretation of the regulations.

No Support for Key Assumptions

California Code of Regulations Section 2002(b)(2) states that any SRIA must identify ""the underlying assumptions the agency used and the rationale and basis for those assumptions" and "the specific categories of individuals and business enterprises who would be affected," among other requirements.[11]

The BEAR report fails to address each of these requirements. The BEAR SRIA report relies on several assumptions with respect to (a) the decline in revenues to TPPPS and cardrooms, (b) increases in revenues for other non-Blackjack games if Blackjack is eliminated, and (c) increases in revenues to tribal casinos. These assumptions comprise the foundation for the report's conclusions but are not supported by any data or analysis. For example, the report states that "it is expected that about half of players will leave cardrooms,"[12] but no further explanation or data supporting this assumption is provided. Similarly, the report states, without support, "we also assume… that new games (including permissible alternatives to Blackjack allowed under the proposed regulations) and patron loyalty result in a 50% increase of other cardroom activities."[13] Finally, the report assumes that much of the revenue lost to cardrooms and TPPPS would be made up by increases in revenue to tribal casinos. However, no support for this assumption is provided. Specifically, the report states that, "we also assume 50% of cardroom TPPPPS patronage (by revenue) will be diverted to tribal casinos."[14] In no case is any justification, supporting data, or analysis for these assumptions provided, in spite of the fact

[10] Proposed player-dealer rotation regulations Section 2076(c).

[11] California Code of Regulations, Section 2002(b)(2) available at: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=3.&title=2.&part=1.&chapter=3.5.&article=5..

[12] BEAR, op. cit., p. 20.

[13] BEAR, op. cit., p. 21

[14] BEAR, op. cit., p. 20.

that the resulting economic and fiscal impacts are directly related to the extent of these economic changes.

The Department of Finance noted in its comments on the original SRIA, that "the SRIA must provide the rationale for any underlying assumptions that are material to the analysis." Nevertheless, the revised SRIA also fails to provide a basis for the assumptions relied upon. In fact, the BEAR report's author, David Roland-Holst, acknowledged that, "we have not been able to find any data on industry adjustments to gaming rule changes of the type being considered."[15] In spite of this acknowledgement that the report's key assumptions and conclusions were not based on analysis of industry data, the revised report maintains the same unsupported assumptions and conclusions contained in the original.

Competitive Effects Not Identified

California Government Code Section 11346.3 states that a SRIA shall assess the "competitive advantages or disadvantages for businesses currently doing business within the state." In spite of this requirement, the BEAR SRIA does not identify the extent to which the proposed regulations would impact the competitiveness of the cardroom industry or the extent to which patrons would shift their gaming activity to other states or to unregulated (illegal) gaming venues. The only mention of such impacts is provided in a footnote on page 20 of the report, which states that "'leakage' of casino patronage to neighboring states with gaming such as Arizona or Nevada would further increase the economic impact on the state economy." Despite this acknowledgement that the proposed regulations would reduce the competitiveness of the state's cardroom industry relative to other states or the illegal market, no analysis of the extent of this impact is provided.

Fiscal Impacts Not Supported

Government Code Section 11346.36 requires the Department of Finance to adopt regulations governing the preparation of a SRIA, including "assessing the effects of a regulatory proposal on the General Fund and special funds of the state and affected local government agencies attributable to the proposed regulation." The BEAR report states that implementation of the proposed regulations would result in "net increases in state and federal revenue."[16] The report justifies this counterintuitive conclusion by stating that "this can happen as the result of shifting economic activity away from gaming toward more heavily taxed activities. For example, a food

[15] Letter from David Roland-Holst to Somjita Mitra dated November 19, 2024.

[16] BEAR, op.cit., p. 33.

safety scare might shift shoppers from farmer's markets to supermarkets, resulting in higher sales tax revenues for the same total household expenditure." [17]

The report's assertion –the counterintuitive result that a reduction in economic activity results in an increase in federal and state tax revenue – is not accompanied by any analysis or supporting data. Specifically, there is no explanation of the nature of the supposedly higher taxed activities that would result from a shift away from cardroom gaming. In fact, cardroom gaming is subject to the same taxes on income or profits that all other California businesses pay. Tribal casinos, however, do not pay these taxes on profits. In addition, cardrooms pay local gaming or business license taxes typically based on the amount of revenue generated, which tribal casinos do not pay. Cardrooms also pay property taxes and collect and pay sales taxes, unlike tribal casinos. As a result, the conclusion that tax revenue would increase as a result of the regulations (which are anticipated to reduce overall state economic activity) is not supported by the data or analysis presented in the report.

Furthermore, the report fails to account for the specific local impacts of the proposed regulations, thereby failing to comply with the California Code of Regulations requirement that a SRIA must identify "the specific categories of individuals and business enterprises who would be affected by the proposed major regulation."[18] In fact, many local jurisdictions in California rely to a significant extent on revenue from cardrooms. Reducing this revenue stream could have a potentially significant adverse impact on the budgets of these communities. The Department of Finance, in its comments on the original SRIA, highlighted the lack of analysis of the local fiscal impacts of the regulations, noting that "The SRIA must provide quantitative estimates of any revenue changes at the local level." In response, the revised SRIA includes a table showing aggregated local fiscal impact results, but still fails to account for the disparate impacts on individual local communities throughout the state. In addition, the aggregated fiscal impact results that are shown indicate a loss of state and local fee revenue of $109 million. However, there is no reconciliation of these results with the overall fiscal impact results, which still show an increase in revenue.

Conclusion

The BEAR report purports to provide an assessment of the likely economic and fiscal impacts of proposed player-dealer rotation and Blackjack regulations. However, methodological errors and failure to support the most important assumptions in the report mean that it does not provide

[17] Note that food purchases are not subject to sales tax regardless of whether they are made at a farmer's market or a supermarket and farmer's market vendors are responsible for collecting sales tax on taxable (non-food or prepared food purchases). Therefore, it is not likely the case that such a shift would increase tax revenue as suggested.

[18] California Code of Regulations, Section 2002(b)(2)(B).

a sufficient basis for decision makers or the public to assess the likely impact of the regulations and fails to comply with the requirements of California law and regulations.

Exhibit D

Dictionary Definitions of “Blackjack”

Index

1. Webster’s Internat. Dict. of the English Language (1884)
2. Webster’s New Internat. Dict. of the English Language (1911)
3. Webster’s New Internat. Dict. of the English Language (1930)

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ENGLISH LANGUAGE

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5/22/25, 10:11 st r's Int rnational Dictionary of th En lish Lan a u : in th a th ntic dition of st r's na rid d dictionary, co pri…

occurs as an abundant natural product in many places, as on the shores of the Dead and Caspian Seas. It is used in cements, in the construction of pavements, etc. See ASPHALT.

2. By extension, any one of the natural hydrocarbons, including the hard, solid, brittle varieties called asphalt, the semisolid **maltha** and mineral tars, the oily petroleums, and even the light, volatile naphthas.

Bi-tu′mi-nate (bĭ-tū′mĭ-nāt), *v. t.* [*imp. & p. p.* BITUMINATED; *p. pr. & vb. n.* BITUMINATING.] [L. *bituminatus*, p. p. of *bituminare* to bituminate. See BITUMEN.] To treat or impregnate with bitumen; to cement with bitumen. "*Bituminated* walls of Babylon." *Feltham.*

Bi-tu′mi-nif′er-ous (-nĭf′ẽr-ŭs), *a.* [*Bitumen* + *-ferous.*] Producing bitumen. *Kirwan.*

Bi-tu′mi-ni-za′tion (-nĭ-zā′shŭn), *n.* [Cf. F. *bituminisation.*] The process of bituminizing. *Mantell.*

Bi-tu′mi-nize (-nīz), *v. t.* [*imp. & p. p.* BITUMINIZED (-nīzd); *p. pr. & vb. n.* BITUMINIZING.] [Cf. F. *bituminiser.*] To prepare, treat, impregnate, or coat with bitumen.

Bi-tu′mi-nous (-nŭs), *a.* [L. *bituminosus*: cf. F. *bitumineux.*] Having the qualities of bitumen; compounded with bitumen; containing bitumen.

Near that *bituminous* lake where Sodom flamed. *Milton.*

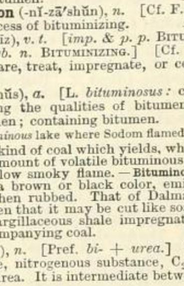
Bituminous coal, a kind of coal which yields, when heated, a considerable amount of volatile bituminous matter. It burns with a yellow smoky flame. — **Bituminous limestone**, a mineral of a brown or black color, emitting an unpleasant smell when rubbed. That of Dalmatia is so charged with bitumen that it may be cut like soap. — **Bituminous shale**, an argillaceous shale impregnated with bitumen, often accompanying coal.

Bi′u-ret (bī′ū-rĕt), *n.* [Pref. *bi-* + *urea.*] (*Chem.*) A white, crystalline, nitrogenous substance, $C_2O_2N_3H_5$, formed by heating urea. It is intermediate between urea and cyanuric acid.

Biv′a-len-cy (bĭv′ȧ-len-sȳ), *n.* (*Chem.*) The quality of being bivalent.

Biv′a-lent (bĭv′ȧ-lent), *a.* [L. *bis* twice + *valens*, p. pr. See VALENCE.] (*Chem.*) Equivalent in combining or displacing power to two atoms of hydrogen; dyad.

Bi′valve (bī′vălv), *n.* [F. *bivalve; bi-* (L. *bis*) + *valve* valve.] **1**. (*Zoöl.*) A mollusk having a shell consisting of two lateral plates or valves joined together by an elastic ligament at the hinge, which is usually strengthened by prominences called *teeth*. The shell is closed by the contraction of two transverse muscles attached to the inner surface, as in the clam, — or by one, as in the oyster. See MOLLUSCA.



Inside of right valve of a Bivalve.

a a′ Anterior and Posterior abductor muscle impressions; *p* Pallial line; *s* Sinus; *c* Cardinal tooth; *t t* Lateral teeth; *h* Ligament; *L* Lunule; *u* Umbo; *v* Ventral margin.

2. (*Bot.*) A pericarp in which the seed case opens or splits into two parts or valves.

Bi′valve (bī′vălv), *a.* [Pref. *bi-* + *valve.*] (*Zoöl. & Bot.*) Having two shells or valves which open and shut, as the oyster and certain seed vessels.

Bi′valved (bī′vălvd), *a.* Having two valves, as the oyster and some seed pods; bivalve.

Bi-val′vous (bī-văl′vŭs), *a.* Bivalvular.

Bi-val′vu-lar (-vū-lẽr), *a.* Having two valves.

Bi-vault′ed (bī-vạlt′ĕd), *a.* [Pref. *bi-* + *vault.*] Having two vaults or arches.

Bi-vec′tor (bī-vĕk′tŏr), *n.* [Pref. *bi-* + *vector.*] (*Math.*) A term made up of the two parts $\rho + \rho_1\sqrt{-1}$, where ρ and ρ_1 are vectors.

Bi-ven′tral (bī-vĕn′tral), *a.* [Pref. *bi-* + *ventral.*] (*Anat.*) Having two bellies or protuberances; as, a *biventral*, or digastric, muscle, or the *biventral* lobe of the cerebellum.

Biv′i-al (bĭv′ĭ-al), *a.* Of or relating to the bivium.

Biv′i-ous (bĭv′ĭ-ŭs *or* bī′vĭ-ŭs; 277), *a.* [L. *bivius*; *bis* twice + *via* way.] Having, or leading, two ways.

Bivious theorems and Janus-faced doctrines. *Sir T. Browne.*

‖ **Biv′i-um** (bĭv′ĭ-ŭm), *n.* [L., a place with two ways. See BIVIOUS.] (*Zoöl.*) One side of an echinoderm, including a pair of ambulacra, in distinction from the opposite side (*trivium*), which includes three ambulacra.

Biv′ouac (bĭv′wăk *or* bĭv′o͝o-ăk; 277), *n.* [F. *bivouac*, *bivac*, prob. fr. G. *beiwache*, or *beiwacht*; *bei* by, near + *wachen* to watch, *wache* watch, guard. See BY, and WATCH.] (*Mil.*) (*a*) The watch of a whole army by night, when in danger of surprise or attack. (*b*) An encampment for the night without tents or covering.

Biv′ouac, *v. i.* [*imp. & p. p.* BIVOUACKED (-wăkt); *p. pr. & vb. n.* BIVOUACKING.] (*Mil.*) (*a*) To watch at night or be on guard, as a whole army. (*b*) To encamp for the night without tents or covering.

Bi′week′ly (bī′wēk′lȳ), *a.* [Pref. *bi-* + *weekly.*] Occurring or appearing once every two weeks; fortnightly. — *n.* A publication issued every two weeks. — **Bi′week′ly**, *adv.*

Bi-wreye′ (bē-rā′), *v. t.* To bewray; to reveal. [*Obs.*]

Biz′an-tine (bĭz′an-tĭn). See BYZANTINE.

Bi-zarre′ (bē-zär′), *a.* [F. *bizarre* odd, fr. Sp. *bizarro* gallant, brave, liberal, prob. of Basque origin; cf. Basque *bizarra* beard, whence the meaning *manly, brave.*] Odd in manner or appearance; fantastic; whimsical; extravagant; grotesque. *C. Kingsley.*

Bi-zet′ (bē-zĕt′), *n.* [Cf. BEZEL.] The upper faceted portion of a brilliant-cut diamond, which projects from the setting and occupies the zone between the girdle and the table. See BRILLIANT, *n.*

Blab (blăb), *v. t.* [*imp. & p. p.* BLABBED (blăbd); *p. pr. & vb. n.* BLABBING.] [Cf. OE. *blaberen*, or Dan. *blabbre*, G. *plappern*, Gael. *blabaran* a stammerer; prob. of imitative origin. Cf. also BLUBBER, *v.*] To utter or tell unnecessarily, or in a thoughtless manner; to publish (secrets or trifles) without reserve or discretion. *Udall.*

And yonder a vile physician *blabbing*
The case of his patient. *Tennyson.*

Blab, *v. i.* To talk thoughtlessly or without discretion; to tattle; to tell tales.

She must burst or *blab*. *Dryden.*

Blab, *n.* [OE. *blabbe.*] One who blabs; a babbler; a telltale. "Avoided as a *blab*." *Milton.*

For who will open himself to a *blab* or a babbler. *Bacon.*

Blab′ber (-bẽr), *n.* A tattler; a telltale.

Black (blăk), *a.* [OE. *blak*, AS. *blæc*; akin to Icel. *blakkr* dark, swarthy, Sw. *bläck* ink, Dan. *blæk*, OHG. *blach*, LG. & D. *blaken* to burn with a black smoke. Not akin to AS. *blāc*, E. *bleak* pallid. √98.] **1**. Destitute of light, or incapable of reflecting it; of the color of soot or coal; of the darkest or a very dark color, the opposite of *white*; characterized by such a color; as, *black* cloth; *black* hair or eyes.

O night, with hue so *black*! *Shak.*

2. In a less literal sense: Enveloped or shrouded in darkness; very dark or gloomy; as, a *black* night; the heavens *black* with clouds.

I spy a *black*, suspicious, threatening cloud. *Shak.*

3. Fig.: Dismal, gloomy, or forbidding, like darkness; destitute of moral light or goodness; atrociously wicked; cruel; mournful; calamitous; horrible. "This day's *black* fate." "*Black* villainy." "Arise, *black* vengeance." "*Black* day." "*Black* despair." *Shak.*

4. Expressing menace, or discontent; threatening; sullen; foreboding; as, to regard one with *black* looks.

☞ *Black* is often used in self-explaining compound words; as, *black*-eyed, *black*-faced, *black*-haired, *black*-visaged.

Black act, the English statute 9 George I., which makes it a felony to appear armed in any park or warren, etc., or to hunt or steal deer, etc., with the face blackened or disguised. Subsequent acts inflicting heavy penalties for malicious injuries to cattle and machinery have been called *black acts*. — **Black angel** (*Zoöl.*), a fish of the West Indies and Florida (*Holacanthus tricolor*), with the head and tail yellow, and the middle of the body black. — **Black antimony** (*Chem.*), the black sulphide of antimony, Sb_2S_3, used in pyrotechnics, etc. — **Black bear** (*Zoöl.*), the common American bear (*Ursus Americanus*). — **Black beast.** See BÊTE NOIRE. — **Black beetle** (*Zoöl.*), the common large cockroach (*Blatta orientalis*). — **Black and blue**, the dark color of a bruise in the flesh, which is accompanied with a mixture of blue. "To pinch the slatterns *black and blue*." *Hudibras.* — **Black bonnet** (*Zoöl.*), the black-headed bunting (*Emberiza Schœniclus*) of Europe. — **Black canker**, a disease in turnips and other crops, produced by a species of caterpillar. — **Black cat** (*Zoöl.*), the fisher, a quadruped of North America allied to the sable, but larger. See FISHER. — **Black cattle**, any bovine cattle reared for slaughter, in distinction from dairy cattle. [*Eng.*] — **Black cherry**. See under CHERRY. — **Black cockatoo** (*Zoöl.*), the palm cockatoo. See COCKATOO. — **Black copper**. Same as MELACONITE. — **Black currant**. (*Bot.*) See CURRANT. — **Black diamond**. (*Min.*) See CARBONADO. — **Black draught** (*Med.*), a cathartic medicine, composed of senna and magnesia. — **Black drop** (*Med.*), vinegar of opium; a narcotic preparation consisting essentially of a solution of opium in vinegar. — **Black earth**, mold; earth of a dark color. *Woodward.* — **Black flag**, the flag of a pirate, often bearing in white a skull and crossbones; a signal of defiance. — **Black flea** (*Zoöl.*), a flea beetle (*Haltica nemorum*) injurious to turnips. — **Black flux**, a mixture of carbonate of potash and charcoal, obtained by deflagrating tartar with half its weight of niter. *Brande & C.* — **Black fly**. (*Zoöl.*) (*a*) In the United States, a small, venomous, two-winged fly of the genus *Simulium*, of several species, exceedingly abundant and troublesome in the northern forests. The larvæ are aquatic. (*b*) A black plant louse, as the bean aphis (*A. fabæ*). — **Black Forest** [a translation of G. *Schwarzwald*], a forest in Baden and Würtemburg, in Germany; a part of the ancient Hercynian forest. — **Black game**, *or* **Black grouse**. (*Zoöl.*) See BLACKCOCK, GROUSE, and HEATH GROUSE. — **Black grass** (*Bot.*), a grasslike rush of the species *Juncus Gerardi*, growing on salt marshes, and making good hay. — **Black gum** (*Bot.*), an American tree, the tupelo or pepperidge. See TUPELO. — **Black Hamburg (grape)** (*Bot.*), a sweet and juicy variety of dark purple or "black" grape. — **Black horse** (*Zoöl.*), a fish of the Mississippi valley (*Cycleptus elongatus*), of the sucker family; the Missouri sucker. — **Black lemur** (*Zoöl.*), the *Lemur niger* of Madagascar; the *acoumbo* of the natives. — **Black list**, a list of persons who are for some reason thought deserving of censure or punishment; — esp. a list of persons stigmatized as insolvent or untrustworthy, made for the protection of tradesmen or employers. See BLACKLIST, *v. t.* — **Black manganese** (*Chem.*), the black oxide of manganese, MnO_2. — **Black Maria**, the close wagon in which prisoners are carried to or from jail. — **Black martin** (*Zoöl.*), the chimney swift. See SWIFT. — **Black moss** (*Bot.*), the common so-called long moss of the southern United States. See TILLANDSIA. — **Black oak**. See under OAK. — **Black ocher**. See WAD. — **Black pigment**, a very fine, light carbonaceous substance, or lampblack, prepared chiefly for the manufacture of printers' ink. It is obtained by burning common coal tar. — **Black plate**, sheet iron before it is tinned. *Knight.* — **Black quarter**, malignant anthrax with engorgement of a shoulder or quarter, etc., as of an ox. — **Black rat** (*Zoöl.*), one of the species of rats (*Mus rattus*), commonly infesting houses. — **Black rent**. See BLACKMAIL, *n.*, 3. — **Black rust**, a disease of wheat, in which a black, moist matter is deposited in the fissures of the grain. — **Black sheep**, one in a family or company who is unlike the rest, and makes trouble. — **Black silver**. (*Min.*) See under SILVER. — **Black and tan**, black mixed or spotted with tan color or reddish brown; — used in describing certain breeds of dogs. — **Black tea**. See under TEA. — **Black tin** (*Mining*), tin ore (cassiterite), when dressed, stamped, and washed, ready for smelting. It is in the form of a black powder, like fine sand. *Knight.* — **Black walnut**. See under WALNUT. — **Black warrior** (*Zoöl.*), an American hawk (*Buteo Harlani*).

Black Fly (*Simulium*) enlarged.

Syn. — Dark; murky; pitchy; inky; somber; dusky; gloomy; swart; Cimmerian; ebon; atrocious.

Black (blăk), *adv.* Sullenly; threateningly; maliciously; so as to produce blackness.

Black, *n.* **1**. That which is destitute of light or whiteness; the darkest color, or rather a destitution of all color; as, a cloth has a good *black*.

Black is the badge of hell,
The hue of dungeons, and the suit of night. *Shak.*

2. A black pigment or dye.

3. A negro; a person whose skin is of a black color, or shaded with black; esp. a member or descendant of certain African races.

4. A black garment or dress; as, she wears *black*. *pl.* (*Obs.*) Mourning garments of a black color; funereal drapery.

Friends weeping, and *blacks*, and obsequies, and the like, show death terrible. *Bacon.*

That was the full time they used to wear *blacks* for the death of their fathers. *Sir T. North.*

5. The part of a thing which is distinguished from the rest by being black.

The *black* or sight of the eye. *Sir K. Digby.*

6. A stain; a spot; a smooch.

Defiling her white lawn of chastity with ugly *blacks* of lust. *Rowley.*

Black and white, writing or print; as, I must have that statement in *black and white*. — **Blue black**, a pigment of a blue black color. — **Ivory black**, a fine kind of animal charcoal prepared by calcining ivory or bones. When ground it is the chief ingredient of the ink used in copperplate printing. — **Berlin black**. See under BERLIN.

Black, *v. t.* [*imp. & p. p.* BLACKED (blăkt); *p. pr. & vb. n.* BLACKING.] [See BLACK, *a.*, and cf. BLACKEN.] **1**. To make black; to blacken; to soil; to sully.

They have their teeth *blacked*, both men and women, for they say a dog hath his teeth white, therefore they will *black* theirs. *Hakluyt.*

Sins which *black* thy soul. *J. Fletcher.*

2. To make black and shining, as boots or a stove, by applying blacking and then polishing with a brush.

Black′a-moor (-ȧ-mōōr), *n.* [*Black* + *Moor.*] A negro or negress. *Shak.*

Black′ art′ (ärt′). The art practiced by conjurers and witches; necromancy; conjuration; magic.

☞ This name was given in the Middle Ages to necromancy, under the idea that the latter term was derived from *niger* black, instead of νεκρός, a dead person, and μαντεία, divination. *Wright.*

Black′-a-vised′ (-ȧ-vīst′), *a.* Dark-visaged; swart.

Black′ball′ (-bạl′), *n.* **1**. A composition for blacking shoes, boots, etc.; also, one for taking impressions of engraved work.

2. A ball of black color, esp. one used as a negative in voting; — in this sense usually two words.

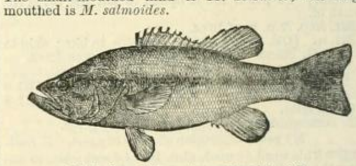
Black′ball′, *v. t.* [*imp. & p. p.* BLACKBALLED (-bạld′); *p. pr. & vb. n.* BLACKBALLING.] **1**. To vote against, by putting a black ball into a ballot box; to reject or exclude, as by voting against with black balls; to ostracize.

He was *blackballed* at two clubs in succession. *Thackeray.*

2. To blacken (leather, shoes, etc.) with blacking.

Black′band′ (-bănd′), *n.* (*Min.*) An earthy carbonate of iron containing considerable carbonaceous matter; — valuable as an iron ore.

Black′ bass′ (bȧs′). (*Zoöl.*) **1**. An edible, fresh-water fish of the United States, of the genus *Micropterus*. The small-mouthed kind is *M. dolomieī*; the large-mouthed is *M. salmoides*.



Black Bass (*Micropterus salmoides*). (⅛)

2. The sea bass. See BLACKFISH, 3.

Black′ber-ry (blăk′bĕr-rȳ), *n.* [OE. *blakberye*, AS. *blæcberie*; *blæc* black + *berie* berry.] The fruit of several species of bramble (*Rubus*); also, the plant itself. *Rubus fruticosus* is the blackberry of England; *R. villosus* and *R. Canadensis* are the high blackberry and low blackberry of the United States. There are also other kinds.

Black′bird (blăk′bẽrd), *n.* (*Zoöl.*) In England, a species of thrush (*Turdus merula*), a singing bird with a fine note; the merle. In America the name is given to several birds, as the *Quiscalus versicolor*, or crow blackbird; the *Agelæus phœniceus*, or red-winged blackbird; the cowbird; the rusty grackle, etc. See REDWING.

Blackbird of Europe (*Turdus merula*). (⅛)

Black′board′ (-bōrd′), *n.* A broad board painted black, or any black surface on which writing, drawing, or the working of mathematical problems can be done with chalk or crayons. It is much used in schools.

Black′ book′ (bo͝ok′). **1**. One of several books of a political character, published at different times and for different purposes; — so called either from the color of the binding, or from the character of the contents.

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2. A book compiled in the twelfth century, containing a description of the court of exchequer of England, an official statement of the revenues of the crown, etc.

3. A book containing details of the enormities practiced in the English monasteries and religious houses, compiled by order of their visitors under Henry VIII., to hasten their dissolution.

4. A book of admiralty law, of the highest authority, compiled in the reign of Edw. III. *Bouvier. Wharton.*

5. A book kept for the purpose of registering the names of persons liable to censure or punishment, as in the English universities, or the English armies.

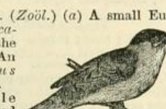
6. Any book which treats of necromancy.

Black′–browed′ (blăk′broud′), *a.* Having black eyebrows. Hence: Gloomy; dismal; threatening; forbidding. *Shak. Dryden.*

Blackburnian Warbler.

Black-bur′ni-an war′bler (blăk-bûr′nĭ-*a*n wăr′blẽr). [Named from Mrs. *Blackburn*, an English lady.] (*Zoöl.*) A beautiful warbler of the United States (*Dendroica Blackburniæ*). The male is strongly marked with orange, yellow, and black on the head and neck, and has an orange-yellow breast.

Black′cap′ (-kăp′), *n.* **1.** (*Zoöl.*) (*a*) A small European song bird (*Sylvia atricapilla*), with a black crown; the mock nightingale. (*b*) An American titmouse (*Parus atricapillus*); the chickadee.



Blackcap of Europe (*Sylvia atricapilla*).

2. (*Cookery*) An apple roasted till black, to be served in a dish of boiled custard.

3. The black raspberry.

Black′coat′ (-kōt′), *n.* A clergyman; — familiarly so called, as a soldier is sometimes called a *redcoat* or a *bluecoat*.

Black′cock′ (-kŏk′), *n.* (*Zoöl.*) The male of the European black grouse (*Tetrao tetrix*, Linn.); — so called by sportsmen. The female is called *gray hen*. See Heath grouse.

Black′ death′ (dĕth′). A pestilence which ravaged Europe and Asia in the fourteenth century.

Black′en (blăk′′n), *v. t.* [*imp. & p. p.* Blackened (-′nd); *p. pr. & vb. n.* Blackening.] [See Black, *a.*, and cf. Black, *v. t.*] **1.** To make or render black.

While the long funerals *blacken* all the way. *Pope.*

2. To make dark; to darken; to cloud. "*Blackened* the whole heavens." *South.*

3. To defame; to sully, as reputation; to make infamous; as, vice *blackens* the character.

Syn. — To denigrate; defame; vilify; slander; calumniate; traduce; malign; asperse.

Black′en, *v. i.* To grow black or dark.

Black′en-er (blăk′′n-ẽr), *n.* One who blackens.

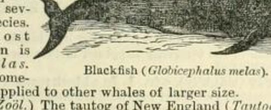
Black′–eyed′ (-īd′), *a.* Having black eyes. *Dryden.*

Black′–faced′ (-fāst′), *a.* Having a black, dark, or gloomy face or aspect.

Black′feet′ (blăk′fēt′), *n. pl.* (*Ethn.*) A tribe of North American Indians formerly inhabiting the country from the upper Missouri River to the Saskatchewan, but now much reduced in numbers.

Black′fin′ (-fĭn′), *n.* (*Zoöl.*) See Bluefin.

Black′fish (-fĭsh), *n.* **1.** (*Zoöl.*) A small kind of whale, of the genus *Globicephalus*, of several species. The most common is *G. melas*. Also sometimes applied to other whales of larger size.



Blackfish (*Globicephalus melas*).

2. (*Zoöl.*) The tautog of New England (*Tautoga*).

3. (*Zoöl.*) The black sea bass (*Centropristis atrarius*) of the Atlantic coast. It is an excellent food fish; — locally called also *black Harry*.

4. (*Zoöl.*) A fish of southern Europe (*Centrolophus pompilus*) of the Mackerel family.

5. (*Zoöl.*) The female salmon in the spawning season.

☞ The name is locally applied to other fishes.

Black′foot′ (-fo͝ot′), *a.* Of or pertaining to the Blackfeet; as, a *Blackfoot* Indian. — *n.* A Blackfoot Indian.

Black′ fri′ar (frī′ẽr). (*Eccl.*) A friar of the Dominican order; — called also *predicant* and *preaching friar;* in France, *Jacobin*. Also, sometimes, a Benedictine.

Black′guard (blăg′gärd), *n.* [*Black + guard.*] **1.** The scullions and lower menials of a court, or of a nobleman's household, who, in a removal from one residence to another, had charge of the kitchen utensils, and being smutted by them, were jocularly called the "black guard;" also, the servants and hangers-on of an army. [*Obs.*]

A lousy slave, that . . . rode with the *black guard* in the duke's carriage, 'mongst spits and dripping pans. *Webster* (1612).

2. The criminals and vagrants or vagabonds of a town or community, collectively. [*Obs.*]

3. A person of stained or low character, esp. one who uses scurrilous language, or treats others with foul abuse; a scoundrel; a rough.

A man whose manners and sentiments are decidedly below those of his class deserves to be called a *blackguard*. *Macaulay.*

4. A vagrant; a bootblack; a gamin. [*Obs.*]

Black′guard, *v. t.* [*imp. & p. p.* Blackguarded; *p. pr. & vb. n.* Blackguarding.] To revile or abuse in scurrilous language. *Southey.*

Black′guard, *a.* Scurrilous; abusive; low; worthless; vicious; as, *blackguard* language.

Black′guard-ism (blăg′gärd-ĭz′m), *n.* The conduct or language of a blackguard; ruffianism.

Black′guard-ly, *adv. & a.* In the manner of or resembling a blackguard; abusive; scurrilous; ruffianly.

Black′head′ (-hĕd′), *n.* (*Zoöl.*) The scaup duck.

Black′heart′ (-härt′), *n.* A heart-shaped cherry with a very dark-colored skin.

Black′–heart′ed, *a.* Having a wicked, malignant disposition; morally bad.

Black′ hole′ (hōl′). A dungeon or dark cell in a prison; a military lock-up or guardroom; — now commonly with allusion to the cell (the Black Hole) in a fort at Calcutta, into which 146 English prisoners were thrust by the nabob Suraja Dowla on the night of June 20, 1756, and in which 123 of the prisoners died before morning from lack of air.

A discipline of unlimited autocracy, upheld by rods, and ferules, and the *black hole*. *H. Spencer.*

Black′ing, *n.* **1.** Any preparation for making things black; esp. one for giving a black luster to boots and shoes, or to stoves.

2. The act or process of making black.

Black′ish, *a.* Somewhat black.

Black′–jack′ (-jăk′), *n.* **1.** (*Min.*) A name given by English miners to sphalerite, or zinc blende; — called also *false galena*. See Blende.

2. Caramel or burnt sugar, used to color wines, spirits, ground coffee, etc.

3. A large leather vessel for beer, etc. [*Obs.*]

4. (*Bot.*) The *Quercus nigra*, or barren oak.

5. The ensign of a pirate.

Black′ lead′ (lĕd′). Plumbago; graphite. It leaves a blackish mark somewhat like lead. See Graphite.

Black′lead′, *v. t.* To coat or to polish with black lead.

Black′leg′ (-lĕg′), *n.* **1.** A notorious gambler. [*Colloq.*]

2. A disease among calves and sheep, characterized by a settling of gelatinous matter in the legs, and sometimes in the neck. [*Eng.*]

Black′ let′ter (lĕt′tẽr). The old English or Gothic letter, in which the early English manuscripts were written, and the first English books were printed. It was conspicuous for its blackness. See Type.

Black′–let′ter, *a.* **1.** Written or printed in black letter; as, a *black-letter* manuscript or book.

2. Given to the study of books in black letter; that is, of old books; out of date.

Kemble, a *black-letter* man! *J. Boaden.*

3. Of or pertaining to the days in the calendar not marked with red letters as saints' days. Hence: Unlucky; inauspicious.

Black′list′ (blăk′lĭst′), *v. t.* To put in a black list as deserving of suspicion, censure, or punishment; esp. to put in a list of persons stigmatized as insolvent or untrustworthy, — as tradesmen and employers do for mutual protection; as, to *blacklist* a workman who has been discharged. See *Black list*, under Black, *a.*

If you *blacklist* us, we will boycott you. *John Swinton.*

Black′ly, *adv.* In a black manner; darkly, in color; gloomily; threateningly; atrociously. "Deeds so *blackly* grim and horrid." *Feltham.*

Black′mail′ (-māl′), *n.* [*Black + mail* a piece of money.] **1.** A certain rate of money, corn, cattle, or other thing, anciently paid, in the north of England and south of Scotland, to certain men who were allied to robbers, or moss troopers, to be by them protected from pillage. *Sir W. Scott.*

2. Payment of money exacted by means of intimidation; also, extortion of money from a person by threats of public accusation, exposure, or censure.

3. (*Eng. Law*) Black rent, or rent paid in corn, flesh, or the lowest coin, as opposed to "white rent," which was paid in silver.

To levy blackmail, to extort money by threats, as of injury to one's reputation.

Black′mail′, *v. t.* [*imp. & p. p.* Blackmailed (-māld′); *p. pr. & vb. n.* Blackmailing.] To extort money from by exciting fears of injury other than bodily harm, as injury to reputation, distress of mind, etc.; as, to *blackmail* a merchant by threatening to expose an alleged fraud. [*U. S.*]

Black′mail′er (-ẽr), *n.* One who extorts, or endeavors to extort, money, by blackmailing.

Black′mail′ing, *n.* The act or practice of extorting money by exciting fears of injury other than bodily harm, as injury to reputation.

Black′ Mon′day (mŭn′dā). **1.** Easter Monday, so called from the severity of that day in 1360, which was so unusual that many of Edward III.'s soldiers, then before Paris, died from the cold. *Stow.*

Then it was not for nothing that my nose fell a bleeding on *Black Monday* last. *Shak.*

2. The first Monday after the holidays; — so called by English schoolboys. *Halliwell.*

Black′ monk′ (mŭnk′). A Benedictine monk.

Black′moor (-mo͞or), *n.* See Blackamoor.

Black′–mouthed′ (-mouthd′), *a.* Using foul or scurrilous language; slanderous.

Black′ness, *n.* The quality or state of being black; black color; atrociousness or enormity in wickedness.

They 're darker now than *blackness*. *Donne.*

Black′poll′ (-pōl′), *n.* [*Black + poll* head.] (*Zoöl.*) A warbler of the United States (*Dendroica striata*).

Black′ pud′ding (pụd′dĭng). A kind of sausage made of blood, suet, etc., thickened with meal.

And fat *black puddings*, — proper food,
For warriors that delight in blood. *Hudibras.*

Black′ Rod′ (rŏd′). (*a*) The usher to the Chapter of the Garter, so called from the *black rod* which he carries. He is of the king's chamber, and also usher to the House of Lords. [*Eng.*] (*b*) An usher in the legislature of British colonies. *Cowell.*

Committed to the custody of the *Black Rod*. *Macaulay.*

Black′root′ (blăk′ro͞ot′), *n.* (*Bot.*) See Colicroot.

Blacks (blăks), *n. pl.* **1.** The name of a kind of ink used in copperplate printing, prepared from the charred husks of the grape, and residue of the wine press.

2. Soot flying in the air. [*Eng.*]

3. Black garments, etc. See Black, *n.*, 4.

Black′salt′er (-sạlt′ẽr), *n.* One who makes crude potash, or black salts.

Black′ salts′ (blăk′ sạlts′). Crude potash. *De Colange.*

Black′smith′ (-smĭth′), *n.* [*Black* (in allusion to the color of the metal) + *smith*. Cf. Whitesmith.] **1.** A smith who works in iron with a forge, and makes iron utensils, horseshoes, etc.

The *blacksmith* may forge what he pleases. *Howell.*

2. (*Zoöl.*) A fish of the Pacific coast (*Chromis*, or *Heliastes, punctipinnis*), of a blackish color.

Black′ snake′ (snāk′) *or* **Black′snake,** *n.* (*Zoöl.*) A snake of a black color, of which two species are common in the United States, the *Bascanium constrictor*, or racer, sometimes six feet long, and the *Scotophis Alleghaniensis*, seven or eight feet long.

☞ The name is also applied to various other black serpents, as *Natrix atra* of Jamaica.

Black′strap′ (-străp′), *n.* **1.** A mixture of spirituous liquor (usually rum) and molasses.

No *blackstrap* to-night; switchel, or ginger pop. *Judd.*

2. Bad port wine; any common wine of the Mediterranean; — so called by sailors.

Black′tail′ (-tāl′), *n.* [*Black + tail.*] **1.** (*Zoöl.*) A fish; the ruff or pope.

2. (*Zoöl.*) The black-tailed deer (*Cervus* or *Cariacus Columbianus*) of California and Oregon; also, the mule deer of the Rocky Mountains. See Mule deer.

Black′thorn′ (-thôrn′), *n.* (*Bot.*) (*a*) A spreading thorny shrub or small tree (*Prunus spinosa*), with blackish bark, and bearing little black plums, which are called sloes; the sloe. (*b*) A species of *Cratægus* or hawthorn (*C. tomentosa*). Both are used for hedges.

Black′ vom′it (vŏm′ĭt). (*Med.*) A copious vomiting of dark-colored matter; or the substance so discharged; — one of the most fatal symptoms in yellow fever.

Black′ wash′ (wŏsh′) *or* **Black′wash,** *n.* **1.** (*Med.*) A lotion made by mixing calomel and lime water.

2. A wash that blackens, as opposed to *whitewash;* hence, figuratively, calumny.

To remove as far as he can the modern layers of *black wash*, and let the man himself, fair or foul, be seen. *C. Kingsley.*

Black′wood (-wo͝od), *n.* A name given to several dark-colored timbers. The East Indian blackwood is from the tree *Dalbergia latifolia*. *Balfour.*

Black′work′ (-wûrk′), *n.* Work wrought by blacksmiths; — so called in distinction from that wrought by whitesmiths. *Knight.*

Blad′der (blăd′dẽr), *n.* [OE. *bladder*, *bleddre*, AS. *blǣdre*, *blǣddre;* akin to Icel. *blaðra*, Sw. *blåddra*, Dan. *blære*, D. *blaar*, OHG. *blātara* the bladder in the body of animals, G. *blatter* blister, pustule; all fr. the same root as AS. *blāwan*, E. *blow*, to puff. See Blow to puff.]

1. (*Anat.*) A bag or sac in animals, which serves as the receptacle of some fluid; as, the urinary *bladder;* the gall *bladder;* — applied especially to the urinary bladder, either within the animal, or when taken out and inflated with air.

2. Any vesicle or blister, especially if filled with air, or a thin, watery fluid.

3. (*Bot.*) A distended, membranaceous pericarp.

4. Anything inflated, empty, or unsound. "To swim with *bladders* of philosophy." *Rochester.*

Bladder nut, *or* **Bladder tree** (*Bot.*), a genus of plants (*Staphylea*) with bladderlike seed pods. — **Bladder pod** (*Bot.*), a genus of low herbs (*Vesicaria*) with inflated seed pods. — **Bladder senna** (*Bot.*), a genus of shrubs (*Colutea*), with membranaceous, inflated pods. — **Bladder worm** (*Zoöl.*), the larva of any species of tapeworm (*Tænia*), found in the flesh or other parts of animals. See Measle, Cysticercus. — **Bladder wrack** (*Bot.*), the common black rock weed of the seacoast (*Fucus nodosus* and *F. vesiculosus*) — called also *bladder tangle*. See Wrack.

Blad′der, *v. t.* [*imp. & p. p.* Bladdered (-dẽrd); *p. pr. & vb. n.* Bladdering.] **1.** To swell out like a bladder with air; to inflate. [*Obs.*] *G. Fletcher.*

2. To put up in bladders; as, *bladdered* lard.

Blad′der-wort′ (-wûrt′), *n.* (*Bot.*) A genus (*Utricularia*) of aquatic or marshy plants, which usually bear numerous vesicles in the divisions of the leaves. These serve as traps for minute animals. See Ascidium.

Blad′der-y (blăd′dẽr-ȳ), *a.* Having bladders; also, resembling a bladder.

Blade (blād), *n.* [OE. *blade*, *blad*, AS. *blæd* leaf; akin to OS., D., Dan., & Sw. *blad*, Icel. *blað*, OHG. *blat*, G. *blatt*, and perh. to L. *folium*, Gr. φύλλον. The root is prob. the same as that of AS. *blōwan*, E. *blow*, to blossom. See Blow to blossom, and cf. Foil leaf of metal.]

1. Properly, the leaf, or flat part of the leaf, of any plant, especially of gramineous plants. The term is sometimes applied to the spire of grasses.

The crimson dulse . . . with its waving *blade*. *Percival.*

First the *blade*, then the ear, after that the full corn in the ear. *Mark* iv. 28.

2. The cutting part of an instrument; as, the *blade* of a knife or a sword.

3. The broad part of an oar; also, one of the projecting arms of a screw propeller.

4. The scapula or shoulder blade.

5. *pl.* (*Arch.*) The principal rafters of a roof. *Weale.*

6. *pl.* (*Com.*) The four large shell plates on the sides, and the five large ones of the middle, of the carapace of the sea turtle, which yield the best tortoise shell. *De Colange.*

7. A sharp-witted, dashing, wild, or reckless, fellow; — a word of somewhat indefinite meaning.

He saw a turnkey in a trice
Fetter a troublesome *blade*. *Coleridge.*

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Blade (blād), *v. t.* To furnish with a blade.
Blade, *v. i.* To put forth or have a blade.

As sweet a plant, as fair a flower, is faded
As ever in the Muses' garden *bladed*. *P. Fletcher.*

Blade′bone′ (-bōn′), *n.* The scapula. See Blade, 4.
Blad′ed (blād′ĕd), *a.* **1.** Having a blade or blades; as, a two-*bladed* knife.

Decking with liquid pearl the *bladed* grass. *Shak.*

2. Divested of blades; as, *bladed* corn.
3. (*Min.*) Composed of long and narrow plates, shaped like the blade of a knife.
Blade′fish′ (blād′fĭsh′), *n.* (*Zoöl.*) A long, thin, marine fish of Europe (*Trichiurus lepturus*); the ribbon fish.
Blade′smith′ (-smĭth′), *n.* A sword cutler. [*Obs.*]
Blad′y (blād′ȳ), *a.* Consisting of blades. [*R.*] "*Blady* grass." *Drayton.*
Blæ (blā *or* blē), *a.* [See Blue.] Dark blue or bluish gray; lead-colored. [*Scot.*]
Blæ′ber-ry (blā′bĕr-rȳ *or* blē′-), *n.* [*Blæ* + *berry*; akin to Icel. *blāber*, Sw. *blåbär*, D. *blaabær*. Cf. Blueberry.] The bilberry. [*North of Eng. & Scot.*]
‖ **Blague** (blăg), *n.* [F.] Mendacious boasting; falsehood; humbug.
Blain (blān), *n.* [OE. *blein*, *bleyn*, AS. *blēgen*; akin to Dan. *blegn*, D. *blein*; perh. fr. the same root as E. *bladder*. See Bladder.] **1.** An inflammatory swelling or sore; a bulla, pustule, or blister.

Blotches and *blains* must all his flesh emboss. *Milton.*

2. (*Far.*) A bladder growing on the root of the tongue of a horse, against the windpipe, and stopping the breath.
Blam′a-ble (blām′ȧ-b'l), *a.* [Cf. F. *blâmable.*] Deserving of censure; faulty; culpable; reprehensible; censurable; blameworthy. — **Blam′a-ble-ness**, *n.* — **Blam′a-bly** (-blȳ), *adv.*
Blame (blām), *v. t.* [*imp. & p. p.* Blamed (blāmd); *p. pr. & vb. n.* Blaming.] [OE. *blamen*, F. *blâmer*, OF. *blasmer*, fr. L *blasphemare* to blaspheme, LL. also to blame, fr. Gr. βλασφημεῖν to speak ill, to slander, to blaspheme, fr. βλάσφημος evil speaking, perh. for βλαψίφημος; βλάψις injury (fr. βλάπτειν to injure) + φήμη a saying, fr. φάναι to say. Cf. Blaspheme, and see Fame.]
1. To censure; to express disapprobation of; to find fault with; to reproach.

We have none to *blame* but ourselves. *Tillotson.*

2. To bring reproach upon; to blemish. [*Obs.*]

She . . . *blamed* her noble blood. *Spenser.*

To blame, to be blamed, or deserving blame; in fault; as, the conductor was *to blame* for the accident.

You were *to blame*, I must be plain with you. *Shak.*

Blame, *n.* [OE. *blame*, fr. F. *blâme*, OF. *blasme*, fr. *blâmer*, OF. *blasmer*, to blame. See Blame, *v.*] **1.** An expression of disapprobation for something deemed to be wrong; imputation of fault; censure.

Let me bear the *blame* forever. *Gen.* xliii. 9.

2. That which is deserving of censure or disapprobation; culpability; fault; crime; sin.

Holy and without *blame* before him in love. *Eph.* i. 4.

3. Hurt; injury. [*Obs.*] *Spenser.*

Syn. — Censure; reprehension; condemnation; reproach; fault; sin; crime; wrongdoing.

Blame′ful (-fụl), *a.* **1.** Faulty; meriting blame. *Shak.*
2. Attributing blame or fault; implying or conveying censure; faultfinding; censorious. *Chaucer.* — **Blame′ful-ly**, *adv.* — **Blame′ful-ness**, *n.*
Blame′less, *a.* Free from blame; without fault; innocent; guiltless; — sometimes followed by *of*.

A bishop then must be *blameless*. 1 *Tim.* iii. 2.
Blameless still of arts that polish to deprave. *Mallet.*
We will be *blameless* of this thine oath. *Josh.* ii. 17.

Syn. — Irreproachable; sinless; unblemished; inculpable. — Blameless, Spotless, Faultless, Stainless. We speak of a thing as *blameless* when it is free from *blame*, or the just imputation of fault; as, a *blameless* life or character. The others are stronger. We speak of a thing as *faultless*, *stainless*, or *spotless*, only when we mean that it is absolutely *without* fault or blemish; as, a *spotless* or *stainless* reputation; a *faultless* course of conduct. The last three words apply only to the general character, while *blameless* may be used in reference to particular points; as, in this transaction he was wholly *blameless*. We also apply *faultless* to personal appearance; as, a *faultless* figure; which can not be done in respect to any of the other words.

Blame′less-ly, *adv.* In a blameless manner.
Blame′less-ness, *n.* The quality or state of being blameless; innocence.
Blam′er (blām′ẽr), *n.* One who blames. *Wyclif.*
Blame′wor′thy (-wûr′thȳ), *a.* Deserving blame; culpable; reprehensible. — **Blame′wor′thi-ness**, *n.*
Blan′card (blăṉ′kẽrd), *n.* [F., fr. *blanc* white.] A kind of linen cloth made in Normandy, the thread of which is partly blanched before it is woven.
Blanch (blȧnch), *v. t.* [*imp. & p. p.* Blanched (blȧncht); *p. pr. & vb. n.* Blanching.] [OE. *blanchen*, *blaunchen*, F. *blanchir*, fr. *blanc* white. See Blank, *a.*]
1. To take the color out of, and make white; to bleach; as, to *blanch* linen; age has *blanched* his hair.
2. (*Gardening*) To bleach by excluding the light, as the stalks or leaves of plants, by earthing them up or tying them together.
3. (*Confectionery & Cookery*) (*a*) To make white by removing the skin of, as by scalding; as, to *blanch* almonds. (*b*) To whiten, as the surface of meat, by plunging into boiling water and afterwards into cold, so as to harden the surface and retain the juices.
4. To give a white luster to (silver, before stamping, in the process of coining).
5. To cover (sheet iron) with a coating of tin.
6. Fig.: To whiten; to give a favorable appearance to; to whitewash; to palliate.

Blanch over the blackest and most absurd things. *Tillotson.*

Syn. — To Blanch, Whiten. To *whiten* is the generic term, denoting, to render white; as, to *whiten* the walls of a room. Usually (though not of necessity) this is supposed to be done by placing some white coloring matter in or upon the surface of the object in question. To *blanch* is to whiten by the removal of coloring matter; as, to *blanch* linen. So the cheek is *blanched* by fear, *i. e.*, by the withdrawal of the blood, which leaves it white.

Blanch (blȧnch), *v. i.* To grow or become white; as, his cheek *blanched* with fear; the rose *blanches* in the sun.

[Bones] *blanching* on the grass. *Tennyson.*

Blanch, *v. t.* [See Blench.] **1.** To avoid, as from fear; to evade; to leave unnoticed. [*Obs.*]

Ifs and ands to qualify the words of treason, whereby every man might express his malice and *blanch* his danger. *Bacon.*
I suppose you will not *blanch* Paris in your way. *Reliq. Wot.*

2. To cause to turn aside or back; as, to *blanch* a deer.
Blanch, *v. i.* To use evasion. [*Obs.*]

Books will speak plain, when counselors *blanch*. *Bacon.*

Blanch, *n.* (*Mining*) Ore, not in masses, but mixed with other minerals.
Blanch′er (-ẽr), *n.* One who, or that which, blanches or whitens; esp., one who anneals and cleanses money; also, a chemical preparation for this purpose.
Blanch′er, *n.* One who, or that which, frightens away or turns aside. [*Obs.*]

And Gynecia, a *blancher*, which kept the dearest deer from her. *Sir P. Sidney.*
And so even now hath he divers *blanchers* belonging to the market, to let and stop the light of the gospel. *Latimer.*

Blanch′ hold′ing (hōld′ĭng). (*Scots Law*) A mode of tenure by the payment of a small duty in white rent (silver) or otherwise.
Blanch-im′e-ter (-ĭm′ē-tẽr), *n.* [1st *blanch* + *-meter.*] An instrument for measuring the bleaching power of chloride of lime and potash; a chlorometer. *Ure.*
Blanc-mange′ (blȧ-mäɴzh′; 277), *n.* [F. *blanc-manger*, lit. white food; *blanc* white + *manger* to eat.] (*Cookery*) A preparation for desserts, etc., made from isinglass, sea moss, cornstarch, or other gelatinous or starchy substance, with milk, usually sweetened and flavored, and shaped in a mold.
Blanc-man′ger (blȧ-mäɴ′zhâ), *n.* [F. See Blancmange.] A sort of fricassee with white sauce, variously made of capon, fish, etc. [*Obs.*] *Chaucer.*
Bland (blănd), *a.* [L. *blandus*, of unknown origin.] **1.** Mild; soft; gentle; smooth and soothing in manner; suave; as, a *bland* temper; *bland* persuasion; a *bland* sycophant. "Exhilarating vapor *bland*." *Milton.*
2. Having soft and soothing qualities; not drastic or irritating; not stimulating; as, a *bland* oil; a *bland* diet.
Blan-da′tion (blăn-dā′shŭn), *n.* [Cf. L. *blanditia*, *blandities*, fr. *blandus*. See Bland.] Flattery. [*Obs.*]
Blan-dil′o-quence (blăn-dĭl′ō-kwens), *n.* [L. *blandiloquentia*; *blandus* mild + *loqui* to speak.] Mild, flattering speech.
Blan-dil′o-quous (-dĭl′ō-kwŭs), } *a.* Fair-spoken;
Blan-di-lo′qui-ous (-dĭ-lō′kwĭ-ŭs), } flattering.
Blan′dise (blăn′dĭs), *v. i.* [Same word as Blandish.] To blandish any one. [*Obs.*] *Chaucer.*
Blan′dish (blăn′dĭsh), *v. t.* [*imp. & p. p.* Blandished (-dĭsht); *p. pr. & vb. n.* Blandishing.] [OE. *blaundisen*, F. *blandir*, fr. L. *blandiri*, fr. *blandus* mild, flattering.] **1.** To flatter with kind words or affectionate actions; to caress; to cajole.
2. To make agreeable and enticing.

Mustering all her wiles,
With *blandished* parleys. *Milton.*

Blan′dish-er (-ẽr), *n.* One who uses blandishments.
Blan′dish-ment (-ment), *n.* [Cf. OF. *blandissement.*] The act of blandishing; a word or act expressive of affection or kindness, and tending to win the heart; soft words and artful caresses; cajolery; allurement.

Cowering low with *blandishment*. *Milton.*
Attacked by royal smiles, by female *blandishments*. *Macaulay.*

Bland′ly (blănd′lȳ), *adv.* In a bland manner; mildly; suavely.
Bland′ness, *n.* The state or quality of being bland.
Blank (blăṉk), *a.* [OE. *blank*, *blonc*, *blaunc*, *blaunche*, fr. F. *blanc*, fem. *blanche*, fr. OHG. *blanch* shining, bright, white, G. *blank*; akin to E. *blink*, cf. also AS. *blanc* white. √98. See Blink, and cf. 1st Blanch.]
1. Of a white or pale color; without color.

To the *blank* moon
Her office they prescribed. *Milton.*

2. Free from writing, printing, or marks; having an empty space to be filled in with some special writing; — said of checks, official documents, etc.; as, *blank* paper; a *blank* check; a *blank* ballot.
3. Utterly confounded or discomfited.

Adam . . . astonied stood, and *blank*. *Milton.*

4. Empty; void; without result; fruitless; as, a *blank* space; a *blank* day.
5. Lacking characteristics which give variety; as, a *blank* desert; a *blank* wall; destitute of interests, affections, hopes, etc.; as, to live a *blank* existence; destitute of sensations; as, *blank* unconsciousness.
6. Lacking animation and intelligence, or their associated characteristics, as expression of face, look, etc.; expressionless; vacant. "*Blank* and horror-stricken faces." *C. Kingsley.*

The *blank* . . glance of a half returned consciousness. *G. Eliot.*

7. Absolute; downright; unmixed; as, *blank* terror.

Blank bar (*Law*), a plea put in to oblige the plaintiff in an action of trespass to assign the certain place where the trespass was committed; — called also *common bar*. — **Blank cartridge**, a cartridge containing no ball. — **Blank deed**. See Deed. — **Blank door**, *or* **Blank window** (*Arch.*), a depression in a wall of the size of a door or window, either for symmetrical effect, or for the more convenient insertion of a door or window at a future time, should it be needed. — **Blank indorsement** (*Law*), an indorsement which omits the name of the person in whose favor it is made; it is usually made by simply writing the name of the indorser on the back of the bill. — **Blank line** (*Print.*), a vacant space of the breadth of a line, on a printed page; a line of quadrats. — **Blank tire** (*Mech.*), a tire without a flange. — **Blank tooling**. See *Blind tooling*, under Blind. — **Blank verse**. See under Verse. — **Blank wall**, a wall in which there is no opening; a dead wall.

Blank (blăṉk), *n.* **1.** Any void space; a void space on paper, or in any written instrument; an interval void of consciousness, action, result, etc.; a void.

I can not write a paper full, as I used to do; and yet I will not forgive a *blank* of half an inch from you. *Swift.*
From this time there ensues a long *blank* in the history of French legislation. *Hallam.*
I was ill. I can't tell how long — it was a *blank*. *G. Eliot.*

2. A lot by which nothing is gained; a ticket in a lottery on which no prize is indicated.

In Fortune's lottery lies
A heap of *blanks*, like this, for one small prize. *Dryden.*

3. A paper unwritten; a paper without marks or characters; a blank ballot; — especially, a paper on which are to be inserted designated items of information, for which spaces are left vacant; a blank form.

The freemen signified their approbation by an inscribed vote, and their dissent by a *blank*. *Palfrey.*

4. A paper containing the substance of a legal instrument, as a deed, release, writ, or execution, with spaces left to be filled with names, date, descriptions, etc.
5. The point aimed at in a target, marked with a white spot; hence, the object to which anything is directed.

Let me still remain
The true *blank* of thine eye. *Shak.*

6. Aim; shot; range. [*Obs.*]

I have stood . . . within the *blank* of his displeasure
For my free speech. *Shak.*

7. A kind of base silver money, first coined in England by Henry V., and worth about 8 pence; also, a French coin of the seventeenth century, worth about 4 pence. *Nares.*
8. (*Mech.*) A piece of metal prepared to be made into something by a further operation, as a coin, screw, nuts.
9. (*Dominoes*) A piece or division of a piece, without spots; as, the "double *blank*"; the "six *blank*."

In blank, with an essential portion to be supplied by another; as, to make out a check *in blank*.

Blank, *v. t.* [*imp. & p. p.* Blanked (blăṉkt); *p. pr. & vb. n.* Blanking.] [Cf. 3d Blanch.] **1.** To make void; to annul. [*Obs.*] *Spenser.*
2. To blanch; to make blank; to damp the spirits of; to dispirit or confuse. [*Obs.*]

Each opposite that *blanks* the face of joy. *Shak.*

Blan′ket (blăṉ′kĕt), *n.* [F. *blanchet*, OF. also *blanket*, a woolen waistcoat or shirt, the blanket of a printing press; prop. white woolen stuff, dim. of *blanc* white; *blanquette* a kind of white pear, fr. *blanc* white. See Blank, *a.*] **1.** A heavy, loosely woven fabric, usually of wool, and having a nap, used in bed clothing; also, a similar fabric used as a robe; or any fabric used as a cover for a horse.
2. (*Print.*) A piece of rubber, felt, or woolen cloth, used in the tympan to make it soft and elastic.
3. A streak or layer of blubber in whales.

☞ The use of blankets formerly as curtains in theaters explains the following figure of Shakespeare. *Nares.*

Nor heaven peep through the *blanket* of the dark,
To cry, "Hold, hold!" *Shak.*

Blanket sheet, a newspaper of folio size. — **A wet blanket**, anything which damps, chills, dispirits, or discourages.

Blan′ket, *v. t.* [*imp. & p. p.* Blanketed; *p. pr. & vb. n.* Blanketing.] **1.** To cover with a blanket.

I 'll . . . *blanket* my loins. *Shak.*

2. To toss in a blanket by way of punishment.

We 'll have our men *blanket* 'em i' the hall. *B. Jonson.*

3. To take the wind out of the sails of (another vessel) by sailing to windward of her.

Blanketed cattle. See *Belted cattle*, under Belted.

Blan′ket-ing, *n.* **1.** Cloth for blankets.
2. The act or punishment of tossing in a blanket.

That affair of the *blanketing* happened to thee for the fault thou wast guilty of. *Smollett.*

Blank′ly (blăṉk′lȳ), *adv.* **1.** In a blank manner; without expression; vacuously; as, to stare *blankly*. *G. Eliot.*
2. Directly; flatly; point blank. *De Quincey.*
Blank′ness, *n.* The state of being blank.
‖ **Blan-quette′** (bläɴ-kĕt′), *n.* [F. *blanquette*, from *blanc* white.] (*Cookery*) A white fricassee.
‖ **Blan-quil′lo** (blăṉ-kēl′yō), *n.* [Sp. *blanquillo* whitish.] (*Zoöl.*) A large fish of Florida and the W. Indies (*Caulolatilus chrysops*). It is red, marked with yellow.
Blare (blâr), *v. i.* [*imp. & p. p.* Blared (blârd); *p. pr. & vb. n.* Blaring.] [OE. *blaren*, *bloren*, to cry, weep; cf. G. *plärren* to bleat, D. *blaren* to bleat, cry, weep. Prob. an imitative word, but cf. also E. *blast*. Cf. Blore.] To sound loudly and somewhat harshly. "The trumpet *blared*." *Tennyson.*
Blare, *v. t.* To cause to sound like the blare of a trumpet; to proclaim loudly.

To *blare* its own interpretation. *Tennyson.*

Blare, *n.* The harsh noise of a trumpet; a loud and somewhat harsh noise, like the blast of a trumpet; a roar or bellowing.

With *blare* of bugle, clamor of men. *Tennyson.*
His ears are stunned with the thunder's *blare*. *J. R. Drake.*

Blar′ney (blär′nȳ), *n.* [*Blarney*, a village and castle near Cork.] Smooth, wheedling talk; flattery. [*Colloq.*]

Blarney stone, a stone in Blarney Castle, Ireland, said to make those who kiss it proficient in the use of blarney.

Blar′ney, *v. t.* [*imp. & p. p.* Blarneyed (-nĭd); *p. pr. & vb. n.* Blarneying.] To influence by blarney; to wheedle with smooth talk; to make or accomplish by blarney. "*Blarneyed* the landlord." *Irving.*

Had *blarneyed* his way from Long Island. *S. G. Goodrich.*

‖ **Bla-sé′** (blȧ-zā′), *a.* [F., p. p. of *blaser.*] Having the sensibilities deadened by excess or frequency of enjoyment; sated or surfeited with pleasure; used up.

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head black, and the neck, rump, and under parts orange brown, becoming yellow on the belly and under the wings. — **black-headed gull**, any of certain gulls, mostly of rather small size, which have the head black and the under parts usually of a rosy tint in the breeding plumage. The common European species is *Larus ridibundus.* The laughing gull (*L. atricilla*) is a well-known American form.

black′heart′ (blăk′härt′), *n.* **a** A heart cherry having a dark flesh and skin, as the Black Tartarian.
b Any of several species of *Polygonum* having black seeds.
c The European whortleberry (*Vaccinium myrtillus*).

black′-heart′ed, *a.* Having a wicked, malignant disposition; morally bad. — **black′-heart′ed-ness.** *n.*

black heat. A heat, just below a dull red heat, at which iron or steel turns black.

black hemlock. A hemlock (*Tsuga mertensiana*) of western North America. It attains a large size; its valuable timber is harder than that of the eastern hemlock.

black hole. A dungeon or dark cell in a prison; a military lock-up or guardroom; — commonly with allusion to the Black Hole, a cell 14 ft. 10 in. by 18 ft. in a fort at Calcutta, into which 146 English prisoners were thrust by the nawab Siraj-ud-daula on the night of June 20, 1756. The heat and lack of air killed 123 of them before morning.

black horehound. An ill-smelling European herb of the mint family (*Ballota nigra*), with ovate, rugose leaves and whorls of dark purple flowers; — called also *fetid, stinking,* and *bastard, horehound.*

black horse. A fish of the Mississippi valley (*Cycleptus elongatus*), of the sucker family; the Missouri sucker.

black ice. Compact transparent ice on a pond or the like.

black′ing, *n.* **1**. Any preparation for making things black; esp.: **a** One for giving a black luster to boots and shoes, or to stoves. **b** *Founding.* A carbon facing for molds, as charred wood, coal, or graphite, ground to a powder.
2. The act or process of making black.

black ipecac. A tropical American rubiaceous shrub (*Psychotria emetica*); also, its powerfully emetic root.

black ironwood. **a** A rhamnaceous shrub or small tree (*Krugiodendron ferreum*) of South Florida and the West Indies, having hard, dark wood. **b** An oleaceous tree of South Africa (*Olea laurifolia*) yielding useful timber.

black′jack′ (blăk′jăk′), *n., or* **black jack**. **1**. A capacious vessel for beer, ale, etc., orig. of tar-coated leather, now usually of japanned metal.
2. A jerkin or jack of black leather.
3. Caramel or burnt sugar, used to color wines, spirits, etc.
4. A pirate flag; the black flag.
5. A small leather-covered club or billy weighted at the head and having an elastic shaft.
6 *Mining.* Sphalerite, or zinc blende; also, sometimes, dark hornblende.
7. *Bot.* **a** A common oak (*Quercus marilandica*) of the eastern United States, often forming dense thickets in poor soil. The bark is black, and the wood hard, but of little value. **b** = TURKEY OAK **b**.
8. *Zoöl.* **a** The mustard beetle. *Eng.* **b** The larva of the turnip sawfly. *Eng.* **c** A scaup duck.

black knot. **1**. A fast, or hard, knot.
2. A disease of plum and cherry trees, characterized by black excrescences on the branches due to the fungus *Plowrightia morbosa;* also, the fungus itself. It is the most serious of the diseases attacking these fruits, often killing the trees. A remedy is pruning and burning.
3. The plum curculio (*Conotrachelus nenuphar*).

black latten. Brass in milled sheets used by braziers, and for drawing into wire.

black lead (lĕd). **1**. Graphite or plumbago; — so called from its leadlike appearance and streak.
2. A lead (graphite) pencil, or markings made with it.

black′lead′ (-lĕd′), *v. t.* To apply black lead to, as the surface of a mold; also, to draw or write in black lead.

black′leg′ (blăk′lĕg′), *n.* **1**. *Veter.* = BLACK QUARTER.
2. A swindler; esp., a dishonest gambler. *Colloq.*
3. A strike breaker; — so called in opprobrium.

black letter. **a** A style of letter or of type characterized by black face and angular outlines, which was imitated by the early printers from a current form of manuscript letter. It still prevails in Germany, and in English-speaking countries is in occasional use, as *Old English* and *Gothic.* See TYPE. **b** Any heavy-faced type.

black′-let′ter, *a.* **1**. Written or printed in black letter.
2. Devoted to old books; hence, out of date.
3. Of or pert. to, or marked by, black letters; — said esp. of days (black on the calendar) not saints' days. Hence, unlucky; inauspicious; unfortunate. Cf. RED-LETTER, *a.*

black lily. Either of two bulbous liliaceous plants (*Fritillaria biflora* and *F. camschatcensis*), natives of the Pacific coast of North America, having the perianth dark purple.

black list. A list of persons thought deserving of censure, punishment, or adverse discrimination; esp., a list of persons stigmatized as bad debtors (as insolvent persons) or untrustworthy (as discharged employees), made for the protection of tradesmen or employers.

black′list′ (blăk′lĭst′), *v. t.* To put in a black list; esp., to put in a tradesmen's or employers' black list.
If you *blacklist* us, we will boycott you. *John Swinton.*

black′ly (blăk′lĭ), *adv.* In a black manner; darkly, in color; gloomily; threateningly; atrociously. "Deeds so *blackly* grim and horrid." *Feltham.*

black′mail′ (-māl′), *n.* [*black* + *mail* rent, tribute.] **1**. A tribute of money, corn, cattle, or other thing, anciently exacted in the north of England and south of Scotland by freebooting chiefs for protection from pillage. Payment or receipt of it was made a felony by 43 Eliz. c. 13 (1601).
2. Payment of money exacted by means of intimidation; also, extortion of money from a person by threats of public accusation, exposure, or censure.
3. *Eng. Law.* Black rent, paid in corn, flesh, or the lowest coin, as opposed to *white rent*, paid in silver.

black′mail′, *v. t.;* BLACK′MAILED′ (-māld′); BLACK′MAIL′-ING. To extort money from by intimidation, esp. by threats of exposure to public accusation, censure, or disgrace; to exact blackmail from; as, to *blackmail* a merchant by threatening to expose alleged or actual fraud.

black′mail′er (-ẽr), *n.* One who blackmails.

black mangrove. **a** A verbenaceous tree (*Avicennia nitida*) of the South Florida coast and the West Indies, usually occurring in dense, mangrovelike thickets. It has numerous short apogeotropic roots. **b** A somewhat similar Australian verbenaceous plant (*Ægiceras majus*).

black maple. A sugar maple (*Acer saccharum nigrum*) distinguished by black bark and dark pubescent foliage.

black Maria. The close wagon in which prisoners are carried to or from jail. *Colloq., U. S.*

black mass. **1**. *Eccl.* A mass for the dead, in which the priest's vestments are black.
2. [*cap.*] A travesty of the Christian Mass ascribed to the reputed worshipers of Satan. See SATANISM.

black measles. **1**. *Med.* A dangerous form of measles characterized by hemorrhages into the skin.
2. A disease of the grape in California caused by the parasitic fungus *Plasmodiophora californica.*

black′meat′ (blăk′mēt′), *n.* The larvæ, or veligers, of various mollusks of the genus *Rissoa*, sometimes found at the surface of the sea in vast numbers.

black medic. A trailing fabaceous herb (*Medicago lupulina*), closely allied to the hop clover, which it resembles in the head of small yellow flowers, but from which it differs in having curved pods. It is a native of Europe and Asia, but is rapidly becoming a cosmopolitan weed.

Black Monday. **1**. Easter Monday; — so called from its severity in 1360, when many of Edward III 's soldiers died before Paris from the cold.
2. The first Monday after the holidays; — so called by English schoolboys.
Black Monday massacre, a massacre of English settlers in Ireland on March 30, 1209.

black mulberry. **a** A European mulberry (*Morus nigra*) with dark foliage and fruit. **b** The red mulberry (*M. rubra*).

black oak. **1**. Any of several American oaks having dark bark or foliage; specif.: **a** The blackjack. **b** The red oak. **c** The scarlet oak. **d** The yellow oak. **e** Either of the two western American oaks *Quercus emoryi* and *Q. californica.*
2. In Australia, the she oak.

black oat grass. An oat grass of the eastern United States (*Stipa avenacea*), having the third scale of the spikelet black.

black olive. A West Indian combretaceous tree (*Bucerας buceras*), with dark-colored, very durable wood. The fruit is an olivelike one-seeded drupe.

black ox, the. *Folklore.* Misfortune; ill luck; also, in *the black ox has trod on* (one's) *toes*, old age.

black oxide of iron. Magnetic oxide of iron, Fe_3O_4.

black oxide of manganese. Manganese dioxide.

black pea. A European bitter vetch (*Lathyrus niger*) the foliage of which turns black in drying.

black pepper. A pungent condiment consisting of the ground fruit of an East Indian plant (*Piper nigrum*). Its husk when dry is black. See PEPPER. Also, the plant.

black perch. **a** A common surf fish (*Embiotoca jacksoni*) of the Pacific coast. **b** The black sea bass (*Centropristes striatus*). **c** The small-mouthed black bass. *Local, U. S.* **d** The flasher (*Lobotes surinamensis*).

black pigment. A kind of lampblack obtained by burning common coal tar, chiefly used for printers' ink.

black pine. **1**. Any of several American pines having dark-colored bark; as: the lodgepole pine; the Jeffrey pine; the pitch pine; the loblolly pine; the jack pine.
2. The Corsican pine of Europe (*Pinus laricio*).
3. In Australia and New Zealand, any of various coniferous trees; as: **a** The red pine (*Callitris calcarata*). **b** The camphorwood (*Callitris robusta*). **c** Either of two species of *Podocarpus* (*P. ferruginea* and *P. spicata*).

black′poll′ (-pōl′), *n.* A North American warbler (*Dendroica striata*), having the top of the head of the male bird black when in full plumage.

black poplar. **a** A European poplar (*Populus nigra*) of which the Lombardy poplar is a variety. See LOMBARDY POPLAR. **b** The swamp cottonwood or its timber. *U. S.*

black′pot′ (blăk′pŏt′), *n.* **1**. A beer or ale mug (cf. BLACKJACK, 1); fig., a toper. *Obs.*
2. Coarse crockery exposed while burning to dense smoke which permeates its pores and answers for glazing.
3. A sausage made of fat and blood.

black powder. Ordinary gunpowder, as distinguished from brown or cocoa powder and smokeless powders.

Black Prince. Edward, Prince of Wales, the son of Edward III. of England; — alluding either to the color of his armor, or, more probably, to the terror of his arms.

black pudding. A kind of sausage made of blood, suet, etc., thickened with meal; a blood pudding.

black quarter. *Veter.* An infectious disease of young cattle caused by the bacillus of blackleg and characterized by high fever and formation of more or less extensive crackling swelling under the skin. Death results in nearly all cases. Called also *blackleg, symptomatic anthrax.*

black race. The Ethiopian race; — loosely so called. See MAN.

black rat. A species of rat (*Mus rattus*), infesting houses. It is now rare, having been driven out by the brown rat.

black rattlesnake. A rattlesnake (*Sistrurus catenatus*) formerly common in the prairie regions of the central United States. It frequents low ground.

Black Republican. A member of the Republican party considered as favoring the cause of the negroes; — first applied in Civil War times by proslavery men. *U. S.*

Black Rod, *abbr.* for *Gentleman Usher of the Black Rod:* **a** The usher to the Chapter of the Garter, who carries a black rod. He is of the king's chamber, and also usher to the House of Lords. *Eng.* **b** An usher in the legislature of British colonies.

black′root′ (blăk′rōōt′), *n.* **a** The Culver's root. **b** The colicroot. **c** A perennial asteraceous plant of the southern United States (*Chænolobus undulatus*) having large black tuberlike rootstocks, sometimes used medicinally.

black rot. **a** A disease of cultivated plants due to fungi or bacteria, and resulting in discoloration and decay. The black rot of the sweet potato is caused by *Ceratocystis fimbriata;* of the tomato, by a species of *Macrosporium;* of the grape, by *Guignardia bidwellii;* of the cabbage and allied plants, by one of the bacteria (*Pseudomonas campestris*). **b** Any organism producing this disease.

Black Rubric. The declaration in the Book of Common Prayer in 1661 respecting kneeling at the administration of the Lord's Supper. It was a revision of the declaration enjoining kneeling contained in the Second Prayer Book of Edward VI., issued in 1551.

black rust. **a** A form of a disease of wheat and other cereals and grasses caused by the parasitic fungus *Puccinia graminis;* also, the fungus itself. See WHEAT RUST. **b** Any similar fungal disease causing discoloration.

black sage. **a** A tropical American boraginaceous shrub (*Cordia cylindristachya*) with sagelike leaves. **b** A woolly-leaved menthaceous plant (*Trichostema lanatum*), native of southern California and Mexico.

black sally. [*black* + *sally* sallow.] An Australian tree (*Eucalyptus stellulata*) with rough, dark-colored bark near the butt. It yields a red kino. See KINO.

black′-sand′er, *n.* One who washes the black sand of the sea beach for gold; a beach comber. *New Zealand.*

black sanicle. A European apiaceous herb (*Astrantia major*), whose aromatic root is used as an alterative.

black scale. A destructive scale (*Lecanium oleæ*) infesting olive, orange, and other trees. See LECANIUM, *Illust.*

black shafting. *Mach.* Shafting made of bars of ordinary rolled iron made cylindrically true only where the couplings, journal bearings, etc., come.

black sheep. One in a family or company who is unlike the rest, and makes trouble.

black sloe. A wild plum (*Prunus umbellata*) of the southern United States. It bears a profusion of white flowers, succeeded by small sour fruits.

black′smith′ (blăk′smĭth′), *n.* [*black* (in ref. to the color of the metal) + *smith.* Cf. WHITESMITH.] **1**. A smith who works in iron with a forge.
2. A blackish Pacific coast fish (*Chromis punctipinnis*).

black snake, *or* **black′snake′** (-snāk′), *n.* **1**. Any of several snakes of a black or very dark color; esp.: **a** In the United States, *Zamenis constrictor*, the black or blue racer, which reaches a length of six feet or more, and the somewhat larger pilot snake (which see). Both are widely distributed and common, and quite harmless. **b** In Jamaica, *Ocyophis ater*, also harmless. *Pseudechis porphyriacus, Hoplocephalus superbus,* and *Notechis scutatus,* venomous snakes widely distributed in Australia (the latter two also in Tasmania), are also called *black snake.*
2. A long braided whip consisting usually of rawhide or leather, very heavy near the butt (to which a short handle is sometimes joined) and tapering to a slender end which terminates in a leaf-shaped piece as a snapper. It is used esp. in driving long teams of oxen, mules, or horses.

black solder. An alloy of copper, zinc, and a little tin.

black Spanish. One of an old and well-known Mediterranean breed of domestic fowls with glossy black plumage, blue legs and feet, bright red comb and wattles, and white face. They are remarkable as egg layers.

black spleenwort. A European maidenhair spleenwort (*Asplenium adiantum-nigrum*) used as an astringent.

black spruce. A spruce (*Picea mariana*) of the northeastern United States and Canada, extending southward in the Alleghenies. It is a slender tree with spreading branches, deep green and very dense foliage, and oval persistent cones. The wood is soft and light. See SPRUCE.

black spurge. A trailing weed of North America (*Euphorbia maculata*), with dark green blotched leaves.

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black hellebore. The Christmas rose.
black hickory. **a** The mockernut. **b** The pignut.
Black Host. The Host in the Black Mass.
Black Hussars. = BLACK BRUNSWICKERS.
black′ies (blăk′ĭz), *n., pl.* of BLACKY.
black Indian hemp. Canadian hemp.
black′ing-in′ paste. Paste made of glue or gelatin, molasses, and lampblack, used in the production of plates in a gelatin process of photo-engraving.
black iron liquor. = IRON LIQUOR.
black′ish, *a.* See -ISH. — **black′ish-ly**, *adv.* — **black′ish-ness**, *n.*
black′it, *a.* Blackened. *Scot.*
black ivory. Negro slaves. *Commercial Slang.*
Black Jack. John A. Logan, a Union major general in the American Civil War; — affectionately so called by his men, alluding to his swarthiness.
blackjack pine. = JACK PINE.
black jewfish. See BLACK GROUPER **a**.
Black Jura. *Geol.* The German Lias. See GEOLOGY.
Black Knight. See FAINEANT, LE NOIR.
black lady. The Lombardy poplar.
black larch. The tamarack.
black laurel. The loblolly bay.
black-led. Black-lead. *Ref. Sp.*
black′legs′, *n.* = BLACKLEG, *n.*, 1 & 2.
blackleg vaccine. *Veter.* A powdered immunizing vaccine made from the affected muscles of animals dead of blackleg.
black leopard. A black or melanistic variety of the common leopard.
Black′ley blue (blăk′lĭ). [From *Blackley*, near Manchester, England.] An impure coloring matter prepared by the action of aniline on crude magenta, used in tinting paper pulp, etc.
black lime. The American linden or basswood.
Black Line. See BLACK WAR.
black ling. Common heather.
black linn. The cucumber tree.
black liquor. = IRON LIQUOR.
black lobster. A lobster whose dark-colored, dingy shell shows that it is about to molt. *Trade Cant, U. S.*
black locust. **a** The common locust. **b** The honey locust.
black′-mack′, *n.* The blackbird. *Obs. Eng.*
black Magellanic cloud. See COALSACK.
black magic. See MAGIC.
black maidenhair. The black spleenwort.
black′maild′. Blackmailed. *Ref. Sp.*
black′mail′ing, *p. pr. & vb. n.* of BLACKMAIL.
black mallard. The black duck. *Local, U. S.*
Black Man. The Devil.
black manganese. Pyrolusite.
black ma′pa-u (mä′pä-ōō; mä′pou). The evergreen tree *Pittosporum tenuifolium. New Zealand.*
black′-mark′, *v. t.* To put a black mark against the name of, as a token of disfavor, condemnation, etc. (Cf. BLACKLIST. — **black′-mark′er**, *n.*
black martin. The common European swift. See SWIFT.
black mercury. The poison ivy.
black millet. African millet.
black mint. The cultivated peppermint (*Mentha piperita vulgaris*).
black mitch′am (mĭch′ăm). = BLACK MINT.
Black Monk. A Benedictine monk.
black′moor (-mōōr), **black′more** (-mōr). Vars. of BLACKAMOOR.
black moss. = LONG MOSS.
black′mouth′, *n.* A foul-speaking or slanderous person. — **black′-mouthed′** (-mouthd′; -moutht′), *a.*
black mustard. See MUSTARD.
black mustard oil. See MUSTARD OIL.
black′neb′, *n.* [*black* + *neb* nose.] **1**. The carrion crow, or other black-billed bird. *Scot.* **2**. A sympathizer with the French Revolution. *Scot. Obs.* **3**. A scab; blackleg. *Cant, Eng.*
black′-necked′ stilt (blăk′nĕkt′). See STILT.
black′-necked′ swan. See SWAN.
black′ness, *n.* See -NESS.
black nightshade. See NIGHTSHADE.
black Norway pine. The pitch pine.
black oak fern. = BLACK MAIDENHAIR.
black oat. = MEXICAN OAT.
black ocher *or* **ochre.** = WAD.
black oldwife. The galafate.
black onyx. Chalcedony colored as a substitute for jet.
black oyster catcher. See OYSTER CATCHER.
black parsley. **a** The stone parsley (*Sison amomum*). **b** A Madeiran apiaceous shrub (*Thapsia decipiens*).
black partridge. See FRANCOLIN.
black paternoster. See PATERNOSTER, 2.
black persimmon. = MEXICAN PERSIMMON.
black pilot. The cockeye pilot.
black plantain. The ribwort.
black plate. Sheet iron before it is tinned.
black plum. The Australian date plum *Diospyros microcarpa.*
black pool. A variety of English pool in which a black ball is placed upon the center spot, and, with certain restrictions, may be played at by any player who has pocketed another ball.
black pope. The head or general of the Jesuits, or Society of Jesus; — so called from the habit of the order and the great power its generals had during the papacy of Pius IX.
black poppy. A black-seeded variety of the opium poppy.
Black Priest of St. Paul's. See ALBERT OF GEIERSTEIN.
black purslane. Black spurge.
black rail. See RAIL.
black rain. Rain blackened by gathering, in its fall, particles of smoke, black fungus spores, or atmospheric dust.
black raspberry. = BLACKCAP, 3.
black rent. = BLACKMAIL, 3.
Black Republic. Hayti, whose citizens are mostly negroes.
black rhinoceros. The smaller species of African rhinoceros.
Black River limestone. [From the *Black River*, New York.] *Geol.* A subdivision of the Middle Ordovician series, esp. in New York.
black rockfish. The priest fish.
Black Rood of Scotland. A relic reputed to have been a part of the true cross. It was brought to Scotland in the 11th century by Margaret, wife of King Malcolm, and was taken by the English at the battle of Neville's Cross (1346). At the time of the Reformation it disappeared.
black rush. **a** The great bulrush. **b** The piassaba.
black salsify. The winter asparagus.
black salt. A crude form of sodium or potassium carbonate. — **black′salt′er**, *n.*
black saltwort. = SEA MILKWORT.
black sampson. The purple coneflower. *Southern U. S.*
black sand. *Founding.* Sand which through repeated use has been burnt, eliminating clay, etc., and has become mixed with coal dust or charcoal.
Black Saturday. In Scottish history, August 4, 1621, notable for legislation favoring episcopacy.
black sea bass. **a** The common sea bass (*Centropristes striatus*). **b** The jewfish (*Stereolepis gigas*) of California.
black′-seed′, *n.* **a** The black medic. **b** Smut grass.
black sickness. See KALA AZAR.
black silver. *Min.* Stephanite.
black skimmer. See SKIMMER, 3.
black′smith′ing, *n.* The craft or employment of a blacksmith.
black snakeroot. **a** The black cohosh. **b** The sanicle.
black snaps. The huckleberry (*Gaylussacia resinosa*). *U. S.*
black soap. Knapweed.
black spot. = APPLE CANKER.

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head black, and the neck, rump, and under parts orange brown, becoming yellow on the belly and under the wings. — **black-headed gull**, any of certain gulls, mostly of rather small size, which have the head black and the under parts usually of a rosy tint in the breeding plumage. The common European species is *Larus ridibundus*. The laughing gull (*L. atricilla*) is a well-known American form.

black'heart' (blăk'härt'), *n.* **a** A heart cherry having a dark flesh and skin, as the Black Tartarian.
b Any of several species of *Polygonum* having black seeds.
c The European whortleberry (*Vaccinium myrtillus*).

black'-heart'ed, *a.* Having a wicked, malignant disposition; morally bad. — **black'-heart'ed-ness**, *n.*

black heat. A heat, just below a dull red heat, at which iron or steel turns black.

black hemlock. A hemlock (*Tsuga mertensiana*) of western North America. It attains a large size; its valuable timber is harder than that of the eastern hemlock.

black hole. A dungeon or dark cell in a prison; a military lock-up or guardroom; — commonly with allusion to the Black Hole, a cell 14 ft. 10 in. by 18 ft. in a fort at Calcutta, into which 146 English prisoners were thrust by the nawab Siraj-ud-daula on the night of June 20, 1756. The heat and lack of air killed 123 of them before morning.

black horehound. An ill-smelling European herb of the mint family (*Ballota nigra*), with ovate, rugose leaves and whorls of dark purple flowers; — called also *fetid*, *stinking*, and *bastard*, *horehound*.

black horse. A fish of the Mississippi valley (*Cycleptus elongatus*), of the sucker family; the Missouri sucker.

black ice. Compact transparent ice on a pond or the like.

black'ing, *n.* **1**. Any preparation for making things black; esp.: **a** One for giving a black luster to boots and shoes, or to stoves. **b** *Founding*. A carbon facing for molds, as charred wood, coal, or graphite, ground to a powder.
2. The act or process of making black.

black ipecac. A tropical American rubiaceous shrub (*Psychotria emetica*); also, its powerfully emetic root.

black ironwood. **a** A rhamnaceous shrub or small tree (*Krugiodendron ferreum*) of South Florida and the West Indies, having hard, dark wood. **b** An oleaceous tree of South Africa (*Olea laurifolia*) yielding useful timber.

black'jack' (blăk'jăk'), *n.*, *or* **black jack**. **1**. A capacious vessel for beer, ale, etc., orig. of tar-coated leather, now usually of japanned metal.
2. A jerkin or jack of black leather.
3. Caramel or burnt sugar, used to color wines, spirits, etc.
4. A pirate flag; the black flag.
5. A small leather-covered club or billy weighted at the head and having an elastic shaft.
6. *Mining*. Sphalerite, or zinc blende; also, sometimes, dark hornblende.
7. *Bot.* **a** A common oak (*Quercus marilandica*) of the eastern United States, often forming dense thickets in poor soil. The bark is black, and the wood hard, but of little value. **b** = TURKEY OAK **b**.
8. *Zoöl.* **a** The mustard beetle. *Eng.* **b** The larva of the turnip sawfly. *Eng.* **c** A scaup duck.

black knot. **1**. A fast, or hard, knot.
2. A disease of plum and cherry trees, characterized by black excrescences on the branches due to the fungus *Plowrightia morbosa*; also, the fungus itself. It is the most serious of the diseases attacking these fruits, often killing the trees. A remedy is pruning and burning.
3. The plum curculio (*Conotrachelus nenuphar*).

black latten. Brass in milled sheets used by braziers, and for drawing into wire.

black lead (lĕd). **1**. Graphite or plumbago; — so called from its leadlike appearance and streak.
2. A lead (graphite) pencil, or markings made with it.

black'lead' (-lĕd'), *v. t.* To apply black lead to, as the surface of a mold; also, to draw or write in black lead.

black'leg' (blăk'lĕg'), *n.* **1**. *Veter.* = BLACK QUARTER.
2. A swindler; esp., a dishonest gambler. *Colloq.*
3. A strike breaker; — so called in opprobrium.

black letter. **a** A style of letter or of type characterized by black face and angular outlines, which was imitated by the early printers from a current form of manuscript letter. It still prevails in Germany, and in English-speaking countries is in occasional use, as *Old English* and *Gothic*. See TYPE. **b** Any heavy-faced type.

black'-let'ter, *a.* **1**. Written or printed in black letter.
2. Devoted to old books; hence, out of date.
3. Of or pert. to, or marked by, black letters; — said esp. of days (black on the calendar) not saints' days. Hence, unlucky; inauspicious; unfortunate. Cf. RED-LETTER, *a.*

black lily. Either of two bulbous liliaceous plants (*Fritillaria biflora* and *F. camschatcensis*), natives of the Pacific coast of North America, having the perianth dark purple.

black list. A list of persons thought deserving of censure, punishment, or adverse discrimination; esp., a list of persons stigmatized as bad debtors (as insolvent persons) or untrustworthy (as discharged employees), made for the protection of tradesmen or employers.

black'list' (blăk'lĭst'), *v. t.* To put in a black list; esp., to put in a tradesmen's or employers' black list.
If you *blacklist* us, we will boycott you. *John Swinton.*

black'ly (blăk'lĭ), *adv.* In a black manner; darkly, in color; gloomily; threateningly; atrociously. "Deeds so *blackly* grim and horrid." *Feltham.*

black'mail' (-māl'), *n.* [*black* + *mail* rent, tribute.] **1**. A tribute of money, corn, cattle, or other thing, anciently exacted in the north of England and south of Scotland by freebooting chiefs for protection from pillage. Payment or receipt of it was made a felony by 43 Eliz. c. 13 (1601).
2. Payment of money exacted by means of intimidation; also, extortion of money from a person by threats of public accusation, exposure, or censure.
3. *Eng. Law.* Black rent, paid in corn, flesh, or the lowest coin, as opposed to *white rent*, paid in silver.

black'mail', *v. t.*; BLACK'MAILED' (-māld'); BLACK'MAIL'ING. To extort money from by intimidation, esp. by threats of exposure to public accusation, censure, or disgrace; to exact blackmail from; as, to *blackmail* a merchant by threatening to expose alleged or actual fraud.

black'mail'er (-ẽr), *n.* One who blackmails.

black mangrove. **a** A verbenaceous tree (*Avicennia nitida*) of the South Florida coast and the West Indies, usually occurring in dense, mangrovelike thickets. It has numerous short apogeotropic roots. **b** A somewhat similar Australian verbenaceous plant (*Ægiceras majus*).

black maple. A sugar maple (*Acer saccharum nigrum*) distinguished by black bark and dark pubescent foliage.

black Maria. The close wagon in which prisoners are carried to or from jail. *Colloq.*

black mass. **1**. *Eccl.* A mass for the dead, in which the priest's vestments are black.
2. [*cap.*] A travesty of the Christian Mass ascribed to the reputed worshipers of Satan. See SATANISM.

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2. A disease of the grape in California caused by the parasitic fungus *Plasmodiophora californica*.

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black medic. A trailing fabaceous herb (*Medicago lupulina*), closely allied to the hop clover, which it resembles in the head of small yellow flowers, but from which it differs in having curved pods. It is a native of Europe and Asia, but is rapidly becoming a cosmopolitan weed.

Black Monday. **1**. Easter Monday; — so called from its severity in 1360, when many of Edward III.'s soldiers died before Paris from the cold.
2. The first Monday after the holidays; — so called by English schoolboys.
Black Monday massacre, a massacre of English settlers in Ireland on March 30, 1209.

black mulberry. **a** A European mulberry (*Morus nigra*) with dark foliage and fruit. **b** The red mulberry (*M. rubra*).

black oak. **1**. Any of several American oaks having dark bark or foliage; specif.: **a** The blackjack. **b** The red oak. **c** The scarlet oak. **d** The yellow oak. **e** Either of the two western American oaks *Quercus emoryi* and *Q. californica*.
2. In Australia, the she-oak.

black oat grass. An oat grass of the eastern United States (*Stipa avenacea*), having the third scale of the spikelet black.

black olive. A West Indian combretaceous tree (*Buceras buceras*), with dark-colored, very durable wood. The fruit is an olivelike one-seeded drupe.

black ox, the. *Folklore.* Misfortune; ill luck; also, in *the black ox has trod on* (one's) *toes*, old age.

black oxide of iron. Magnetic oxide of iron, Fe_3O_4.

black oxide of manganese. Manganese dioxide.

black pea. A European bitter vetch (*Lathyrus niger*) the foliage of which turns black in drying.

black pepper. A pungent condiment consisting of the ground fruit of an East Indian plant (*Piper nigrum*). Its husk when dry is black. See PEPPER. Also, the plant.

black perch. **a** A common surf fish (*Embiotoca jacksoni*) of the Pacific coast. **b** The black sea bass (*Centropristes striatus*). **c** The small-mouthed black bass. *Local, U. S.* **d** The flasher (*Lobotes surinamensis*).

black pigment. A kind of lampblack obtained by burning common coal tar, chiefly used for printers' ink.

black pine. **1**. Any of several American pines having dark-colored bark; as: the lodgepole pine, the Jeffrey pine; the pitch pine; the loblolly pine; the jack pine.
2. The Corsican pine of Europe (*Pinus laricio*).
3. In Australia and New Zealand, any of various coniferous trees; as: **a** The red pine (*Callitris calcarata*). **b** The camphorwood (*Callitris robusta*). **c** Either of two species of *Podocarpus* (*P. ferruginea* and *P. spicata*).

black'poll' (-pōl'), *n.* A North American warbler (*Dendroica striata*), having the top of the head of the male bird black when in full plumage.

black poplar. **a** A European poplar (*Populus nigra*) of which the Lombardy poplar is a variety. See LOMBARDY POPLAR. **b** The swamp cottonwood or its timber. *U. S.*

black'pot' (blăk'pŏt'), *n.* **1**. A beer or ale mug (cf. BLACKJACK, 1); fig., a toper. *Obs.*
2. Coarse crockery exposed while burning to dense smoke which permeates its pores and answers for glazing.
3. A sausage made of fat and blood.

black powder. Ordinary gunpowder, as distinguished from brown or cocoa powder and smokeless powders.

Black Prince. Edward, Prince of Wales, the son of Edward III. of England; — alluding either to the color of his armor, or, more probably, to the terror of his arms.

black pudding. A kind of sausage made of blood, suet, etc., thickened with meal; a blood pudding.

black quarter. *Veter.* An infectious disease of young cattle caused by the bacillus of blackleg and characterized by high fever and formation of more or less extensive crackling swelling under the skin. Death results in nearly all cases. Called also *blackleg*, *symptomatic anthrax*.

black race. The Ethiopian race; — loosely so called. See MAN.

black rat. A species of rat (*Mus rattus*), infesting houses. It is now rare, having been driven out by the brown rat.

black rattlesnake. A rattlesnake (*Sistrurus catenatus*) formerly common in the prairie regions of the central United States. It frequents low ground.

Black Republican. A member of the Republican party considered as favoring the cause of the negroes; — first applied in Civil War times by proslavery men. *U. S.*

Black Rod, *abbr.* for *Gentleman Usher of the Black Rod*: **a** The usher to the Chapter of the Garter, who carries a black rod. He is of the king's chamber, and also usher to the House of Lords. *Eng.* **b** An usher in the legislature of British colonies.

black'root' (blăk'rōōt'), *n.* **a** The Culver's root. **b** The colicroot. **c** A perennial asteraceous plant of the southern United States (*Chænolobus undulatus*) having large black tuberlike rootstocks, sometimes used medicinally.

black rot. **a** A disease of cultivated plants due to fungi or bacteria, and resulting in discoloration and decay. The black rot of the sweet potato is caused by *Ceratocystis fimbriata*; of the tomato, by a species of *Macrosporium*; of the grape, by *Guignardia bidwellii*; of the cabbage and allied plants, by one of the bacteria (*Pseudomonas campestris*). **b** Any organism producing this disease.

Black Rubric. The declaration in the Book of Common Prayer in 1661 respecting kneeling at the administration of the Lord's Supper. It was a revision of the declaration enjoining kneeling contained in the Second Prayer Book of Edward VI., issued in 1551.

black rust. **a** A form of a disease of wheat and other cereals and grasses caused by the parasitic fungus *Puccinia graminis*; also, the fungus itself. See WHEAT RUST. **b** Any similar fungal disease causing discoloration.

black sage. **a** A tropical American boraginaceous shrub (*Cordia cylindristachya*) with sagelike leaves. **b** A woolly-leaved menthaceous plant (*Trichostema lanatum*), native of southern California and Mexico.

black sally. [*black* + *sally* = *sallow*.] An Australian tree (*Eucalyptus stellulata*) with rough, dark-colored bark near the butt. It yields a red kino. See KINO.

black'-sand'er, *n.* One who washes the black sand of the sea beach for gold; a beach comber. *New Zealand.*

black sanicle. A European apiaceous herb (*Astrantia major*), whose aromatic root is used as an alterative.

black scale. A destructive scale (*Lecanium oleæ*) infesting olive, orange, and other trees. See LECANIUM, *Illust.*

black shafting. *Mach.* Shafting made of bars of ordinary rolled iron made cylindrically true only where the couplings, journal bearings, etc., come.

black sheep. One in a family or company who is unlike the rest, and makes trouble.

black sloe. A wild plum (*Prunus umbellata*) of the southern United States. It bears a profusion of white flowers, succeeded by small sour fruits.

black'smith' (blăk'smĭth'), *n.* [*black* (in ref. to the color of the metal) + *smith*. Cf. WHITESMITH.] **1**. A smith who works in iron with a forge.
2. A blackish Pacific coast fish (*Chromis punctipinnis*).

black snake, *or* **black'snake'** (-snāk'), *n.* **1**. Any of several snakes of a black or very dark color; esp.: **a** In the United States, *Zamenis constrictor*, the black or blue racer, which reaches a length of six feet or more, and the somewhat larger pilot snake (which see). Both are widely distributed and common, and quite harmless. **b** In Jamaica, *Ocyophis ater*, also harmless. *Pseudechis porphyriaceus*, *Hoplocephalus superbus*, and *Notechis scutatus*, venomous snakes widely distributed in Australia (the latter two also in Tasmania), are also called *black snake*.
2. A long braided whip consisting usually of rawhide or leather, very heavy near the butt (to which a short handle is sometimes joined) and tapering to a slender end which terminates in a leaf-shaped piece as a snapper. It is used esp. in driving long teams of oxen, mules, or horses.

black solder. An alloy of copper, zinc, and a little tin.

black Spanish. One of an old and well-known Mediterranean breed of domestic fowls with glossy black plumage, blue legs and feet, bright red comb and wattles, and white face. They are remarkable as egg layers.

black spleenwort. A European maidenhair spleenwort (*Asplenium adiantum-nigrum*) used as an astringent.

black spruce. A spruce (*Picea mariana*) of the northeastern United States and Canada, extending southward in the Alleghenies. It is a slender tree with spreading branches, deep green and very dense foliage, and oval persistent cones. The wood is soft and light. See SPRUCE.

black spurge. A trailing weed of North America (*Euphorbia maculata*), with dark green blotched leaves.

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black hellebore. The Christmas rose.
black hickory. **a** The mockernut. **b** The pignut.
Black Host. The Host in the Black Mass.
Black Hussars. = BLACK BRUNSWICKERS.
black'ies (blăk'ĭz), *n.*, *pl.* of BLACKY.
black Indian hemp. Canadian hemp.
black'ing-in' paste. Paste made of glue or gelatin, molasses, and lampblack, used in the production of plates in a gelatin process of photo-engraving.
black iron liquor. = IRON LIQUOR.
black'ish, *a.* See -ISH. — **black'ish-ly**, *adv.* — **black'ish-ness**, *n.*
black'it, *a.* Blackened. *Scot.*
black ivory. Negro slaves. *Commercial Slang.*
Black Jack. John A. Logan, a Union major general in the American Civil War; — affectionately so called by his men, alluding to his swarthiness.
blackjack pine. = JACK PINE.
black jewfish. See BLACK GROUPER **a**.
Black Jura. *Geol.* The German Lias. See GEOLOGY.
Black Knight. See FAINEANT, LE NOIR.
black lady. The Lombardy poplar.
black larch. The tamarack.
black laurel. The loblolly bay.
black-led. Black-lead. *Ref. Sp.*
black'legs', *n.* = BLACKLEG, *n.*, 1 & 2.
blackleg vaccine. *Veter.* A powdered immunizing vaccine made from the affected muscles of animals dead of blackleg.
black leopard. A black or melanistic variety of the common leopard.
Black'ley blue (blăk'lĭ). [From *Blackley*, near Manchester, England.] An impure coloring matter prepared by the action of aniline on crude magenta, used in tinting paper pulp, etc.
black lime. The American linden or basswood.
Black Line. See BLACK WAR.
black ling. Common heather.
black linn. The cucumber tree.
black liquor. = IRON LIQUOR.
black lobster. A lobster whose dark-colored, dingy shell shows that it is about to molt. *Trade Cant, U. S.*
black locust. **a** The common locust. **b** The honey locust.
black'-mack', *n.* The blackbird. *Obs.* *Eng.*
black Magellanic cloud. See COALSACK.
black magic. See MAGIC.
black maidenhair. The black spleenwort.
black'maild'. Blackmailed. *Ref. Sp.*
black'mail'ing, *p. pr.* & *vb. n.* of BLACKMAIL.
black mallard. The black duck. *Local, U. S.*
Black Man. The Devil.
black manganese. Pyrolusite.
black ma'pa-u (mä'pä-ōō; mä'pou). The evergreen tree *Pittosporum tenuifolium*. *New Zealand.*
black'-mark', *v. t.* To put a black mark against the name of, as a token of disfavor, condemnation, etc. Cf. BLACKLIST. — **black'-mark'er**, *n.*
black martin. The common European swift. See SWIFT.
black mercury. The poison ivy.
black millet. African millet.
black mint. The cultivated peppermint (*Mentha piperita vulgaris*).
black mitch'am (mĭch'ăm). = BLACK MINT.
Black Monk. A Benedictine monk.
black'moor (-mōōr), **black'more** (-mōr). Vars. of BLACKAMOOR.
black moss. = LONG MOSS.
black'mouth', *n.* A foul-speaking or slanderous person. — **black'-mouthed'** (-mouthd'; -moutht'), *a.*
black mustard. See MUSTARD.
black mustard oil. See MUSTARD OIL.
black'neb', *n.* [*black* + *neb* nose.] **1**. The carrion crow, or other black-billed bird. *Scot.* **2**. A sympathizer with the French Revolution. *Scot. Obs.* **3**. A scab; blackleg. *Cant, Eng.*
black'-necked' stilt (blăk'nĕkt'). See STILT.
black'-necked' swan. See SWAN.
black'ness, *n.* See -NESS.
black nightshade. See NIGHTSHADE.
black Norway pine. The pitch pine.
black oak fern. = BLACK MAIDENHAIR.
black oat. = MEXICAN OAT.
black ocher *or* **ochre**. = WAD.
black oldwife. The galafate.
black onyx. Chalcedony colored as a substitute for jet.
black oyster catcher. See OYSTER CATCHER.
black parsley. **a** The stone parsley (*Sison amomum*). **b** A Madeiran apiaceous shrub (*Thapsia decipiens*).
black partridge. See FRANCOLIN.
black paternoster. See PATERNOSTER, 2.
black persimmon. = MEXICAN PERSIMMON.
black pilot. The cockeye pilot.
black plantain. The ribwort.
black plate. Sheet iron before it is tinned.
black plum. The Australian date plum *Diospyros microcarpa*.
black pool. A variety of English pool in which a black ball is placed upon the center spot, and, with certain restrictions, may be played at by any player who has pocketed another ball.
black pope. The head or general of the Jesuits, or Society of Jesus; — so called from the habit of the order and the great power its generals had during the papacy of Pius IX.
black poppy. A black-seeded variety of the opium poppy.
Black Priest of St. Paul's. See ALBERT OF GEIERSTEIN.
black purslane. Black spurge.
black rail. See RAIL.
black rain. Rain blackened by gathering, in its fall, particles of smoke, black fungus spores, or atmospheric dust.
black raspberry. = BLACKCAP, 3.
black rent. = BLACKMAIL, 3.
Black Republic. Haiti, whose citizens are mostly negroes.
black rhinoceros. The smaller species of African rhinoceros.
Black River limestone. [From the *Black River*, New York.] *Geol.* A subdivision of the Middle Ordovician series, esp. in New York.
black rockfish. The priest fish.
Black Rood of Scotland. A relic reputed to have been a part of the true cross. It was brought to Scotland in the 11th century by Margaret, wife of King Malcolm, and was taken by the English at the battle of Neville's Cross (1346). At the time of the Reformation it disappeared.
black rush. **a** The great bulrush. **b** The piassaba.
black salsify. The winter asparagus.
black salt. A crude form of sodium or potassium carbonate. — **black'salt'er**, *n.*
black saltwort. = SEA MILKWORT.
black sampson. The purple coneflower. *Southern U. S.*
black sand. *Founding.* Sand which through repeated use has been burnt, eliminating clay, etc., and has become mixed with coal dust or charcoal.
Black Saturday. In Scottish history, August 4, 1621, notable for legislation favoring episcopacy.
black sea bass. **a** The common sea bass (*Centropristes striatus*). **b** The jewfish (*Stereolepis gigas*) of California.
black'-seed', *n.* **a** The black medic. **b** Smut grass.
black sickness. See KALA AZAR.
black silver. *Min.* Stephanite.
black skimmer. See SKIMMER, 2.
black'smith'ing, *n.* The craft or employment of a blacksmith.
black snakeroot. **a** The black cohosh. **b** The sanicle.
black snaps. The huckleberry (*Gaylussacia resinosa*). *U. S.*
black soap. Knapweed.
black spot. = APPLE CANKER.

BLACKJACK-STYLE GAMES & ROTATION DRAFT REGULATIONS

California Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
E-mail: BGC_Regulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games;
Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

Dear Director Yolanda Morrow and Ms. Andreia McMillen:

We, at **Kings Card Club and Westlane Card Room** employ **over 200** people and contribute **in excess of $300,000** in taxes to our local communities. We are writing to express our serious concerns regarding the recently proposed draft regulations on April 11, 2025, focused on blackjack-style games and the rotation of the player-dealer position.

We align with the objections raised by Munger, Tolles & Olson LLP on behalf of the California Gaming Association, Communities for California Cardrooms, and the California Cardroom Alliance, emphasizing that the draft regulations lack legal support and exceed the Bureau's statutory authority under the Gambling Control Act. These changes, unsupported by statute or case law, would have a detrimental impact on the cardroom industry, jeopardizing jobs and the local economies that benefit from our operations.

Moreover, the focus of the Bureau should be directed towards curbing the proliferation of unlicensed gambling locations that operate outside the legal framework, rather than imposing unsupported punitive regulations on compliant cardrooms. The discrepancy between the lack of enforcement against illegal activities and the effort spent on these draft regulations is concerning and suggests a misalignment with the Bureau's mandate to ensure legal gaming practices.

Our cardroom not only provides significant tax revenues but also supports local public services critical to our community, including police, fire protection, parks and other critical resident services. The proposed changes harm our communities, jobs, and quality of life.

In addition to these unsupported draft regulations, my business and every other cardroom in the state are spending time and resources preparing to defend against litigation filed by seven of the largest and wealthiest tribal casinos due to the passage of Senate Bill 549.

We ask the Bureau to reconsider the proposed draft regulations, focus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy.

We appreciate your consideration.

General Manger
Kings Card Club and Westlane Card Room

BLACKJACK-STYLE GAMES & ROTATION DRAFT REGULATIONS

California Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
E-mail: BGC_Regulations@doj.ca.gov

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Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

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We ask the Bureau to reconsider the proposed draft regulations, focus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy.

We appreciate your consideration.

Sincerely,

Richard Shindle
Managing Partner/ Owner
Kings Card Club and Westlane Card Room

LIVERMORE CASINO

Cardroom • Restaurant • Sports Bar

April 29, 2025

California Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
E-mail: BGC_Regulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games;
Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

Dear Director Yolanda Morrow and Ms. Andreia McMillen:

We, at Livermore Casino, employ more than 100 employees and contribute $204,000.00 in taxes annually to our local communities. We are writing to express our serious concerns regarding the recently proposed draft regulations on April 11, 2025, focused on blackjack-style games and the rotation of the player-dealer position.

We align with the objections raised by Munger, Tolles & Olson LLP on behalf of the California Gaming Association, Communities for California Cardrooms, and the California Cardroom Alliance, emphasizing that the draft regulations lack legal support and exceed the Bureau's statutory authority under the Gambling Control Act. These changes, unsupported by statute or case law, would have a detrimental impact on the cardroom industry, jeopardizing jobs and the local economies that benefit from our operations.

Moreover, the focus of the Bureau should be directed towards curbing the proliferation of unlicensed gambling locations that operate outside the legal framework, rather than imposing unsupported punitive regulations on compliant cardrooms. The discrepancy between the lack of enforcement against illegal activities and the effort spent on these draft regulations is concerning and suggests a misalignment with the Bureau's mandate to ensure legal gaming practices.

Our cardroom not only provides significant tax revenues but also supports local public services critical to our community, including police, fire protection, parks and other critical resident services. The proposed changes harm our communities, jobs, and quality of life.

In addition to these unsupported draft regulations, my business and every other cardroom in the state are spending time and resources preparing to defend against litigation filed by seven of the largest and wealthiest tribal casinos due to the passage of Senate Bill 549.

We ask the Bureau to reconsider the proposed draft regulations, focus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy.

We appreciate your consideration.

Sincerely,

Kristen Salisbury
Director of Operations
Livermore Casino

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A. McMillen
Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

May 28, 2025

VIA Email: BGC_Regulations@doj.ca.gov

RE: Opposition to Proposed Regulations on Blackjack (Sections 2010, 2073–2075 of Title 11, Division 3, Chapter 1, California Code of Regulations)

Dear Ms. McMillen:

Lucky Chances Casino respectfully submits this detailed opposition to the California Department of Justice's (DOJ) proposed regulations concerning the approval and prohibition of blackjack-style games. Established in 1998, Lucky Chances Casino has been operating blackjack-style games consistently approved by the DOJ, in strict compliance with California's gaming laws and regulations. The proposed regulations, as outlined in Sections 2010 and 2073–2075, present a profound overreach of regulatory authority, impose unwarranted economic hardship, and are fundamentally inconsistent with the legislative framework governing gambling in California.

I. Lack of Statutory Authority (Gov. Code § 11349(b))

Under Government Code § 11349(b), regulations must be supported by clear and explicit statutory authority. The Gambling Control Act (GCA), codified explicitly in Business and Professions Code § 19800 et seq., clearly states the Legislature's intent to regulate lawful gaming activities, not to broaden statutory prohibitions on specific games. Penal Code § 330, the statutory ban on specific gambling games including "twenty-one," provides no basis for the expansive interpretation proposed by the DOJ. The proposed regulations, therefore, unjustifiably stretch statutory language, misusing Business and Professions Code § 19826(g) as a means to circumvent established law.

II. Contravention of Legislative Intent and Penal Code § 330.11 (Gov. Code § 11349(d))

Penal Code § 330.11 explicitly exempts games featuring a systematically rotating player-dealer position from statutory prohibitions. The Legislature intentionally crafted this exemption to permit such player-dealer games. Judicial precedent affirms that prohibitions in Penal Code § 330 must be strictly interpreted, limiting their scope solely to explicitly prohibited games. California courts, including in cases such as Tibbetts v. Van De Kamp (1990) and Oliver v. County of Los Angeles (1998), have reaffirmed that only explicitly enumerated games fall within these prohibitions. The proposed regulations conflict directly with this legislative and judicial consensus.

III. Historical Regulatory Precedent and Inconsistency (Gov. Code § 11349(c))

Since our inception in 1998, Lucky Chances Casino has consistently operated DOJ-approved blackjack-style games. These approvals have established a clear regulatory precedent and framework upon which businesses have reasonably relied. Abruptly overturning this precedent without clear justification or individualized review introduces significant uncertainty and violates the Administrative Procedure Act's clarity requirement outlined in Government Code § 11349(c). This action undermines decades of consistent and predictable regulatory practice, essential for business stability and investment.

IV. Procedural and Constitutional Violations (Gov. Code § 11425.10)

The proposed blanket prohibition and retrospective reversal of previously granted approvals constitute substantial procedural and constitutional violations. Specifically, Government Code § 11425.10 emphasizes due process and fair administrative procedures, mandating clear notice and individualized adjudication. However, the proposed rules seek retroactive application to previously approved, lawful business practices, thereby undermining fairness, due process rights, and property interests protected under both the California and United States Constitutions.

V. Failure to Demonstrate Necessity and Consider Alternatives (Gov. Code §§ 11349(a), 11346.2(b)(4)(A))

The APA requires agencies to establish the necessity of new regulations, supported by substantial evidence, when introducing new regulations (Gov. Code § 11349(a)). Moreover, agencies must explicitly evaluate and address alternative regulatory approaches under Gov. Code § 11346.2(b)(4)(A). The DOJ's proposed regulations fail to fulfill either criterion. No substantial evidence has been presented to justify the necessity of a sweeping prohibition of blackjack-style games. Furthermore, the agency failed to explore less burdensome alternatives, such as more straightforward operational guidelines

or enhanced oversight, before resorting to the drastic step of banning widely established and regulated games outright.

VI. Disproportionate Economic and Community Impact

Lucky Chances Casino makes a significant contribution to local employment, municipal budgets, and community services. The proposed regulation, according to the DOJ's Standardized Regulatory Impact Assessment (SRIA), would severely damage the economic viability of cardrooms across California, disproportionately affecting local economies, public safety funding, and essential services. This stark economic consequence contrasts sharply with the absence of demonstrated benefits from the regulation, especially given the questionable assumption that displaced gaming revenues would seamlessly transfer to tribal casinos exempt from these prohibitions.

VII. Regulatory Fairness and Competitive Balance

The proposed regulations significantly disrupt the fair competitive balance between cardrooms and tribal gaming establishments, which remain unaffected by these new rules. This imbalance undermines fundamental fairness and competition, contrary to longstanding public policy principles promoting equitable treatment and regulatory parity among gaming entities within California.

VIII. Lack of Meaningful Public Access to Hearing (Gov. Code § 11346.8)

The DOJ's decision to conduct its rulemaking hearing exclusively via Zoom, without offering an in-person option, presents additional procedural concerns. While virtual access may serve convenience, it does not substitute for genuine public accessibility and inclusive participation as envisioned under Government Code § 11346.8 and articulated in the Office of Administrative Law's guidance. Many affected parties—especially those from lower-income, rural, or non-English-speaking communities—face significant barriers to accessing online-only forums. Given the scope and consequences of this proposed regulation, the failure to provide an in-person hearing undermines the integrity of the public comment process and may warrant review under the APA.

IX. Failure to Comply with Procedural Requirements (Gov. Code §§ 11346–11348)

The DOJ's rulemaking process must adhere to the procedural requirements laid out in Government Code §§ 11346 through 11348. These include the preparation of a notice of proposed action, a statement of reasons, and meaningful opportunities for the public to review and comment. Agencies are further obligated to summarize and respond to public comments received. To date, commenters such as the California Gaming Association and affected licensees have raised substantial objections; however, the Department has failed to address the viability of less restrictive alternatives in a meaningful manner.

CONCLUSION

Given the substantial legal, economic, and procedural deficiencies detailed above, Lucky Chances Casino urges the Department of Justice to withdraw these proposed regulations immediately. We strongly advocate instead for collaborative engagement with stakeholders—including industry participants, local governments, and legislative representatives—to develop transparent, fair, and lawful regulations that protect consumers, respect existing legal frameworks, and sustain essential community contributions.

Thank you for your thorough consideration of these critical concerns.

Sincerely,

Jarhett Blonien on behalf of

Lucky Chances Casino

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A. McMillen
Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

May 29, 2025

VIA Email: BGC_Regulations@doj.ca.gov

RE: Opposition to Proposed Player-Dealer Rotation Regulations (Sections 2070–2071 of Title 11, Division 3, Chapter 1, California Code of Regulations)

Dear Ms. McMillen:

On behalf of Lucky Chances Casino, I write in strong opposition to the DOJ's proposed player-dealer rotation regulations (Title 11, Sections 2070–2071). These rules exceed statutory authority, conflict with longstanding legal interpretations, and would cause widespread disruption without addressing any demonstrated regulatory failure. We urge the Bureau of Gambling Control (BGC) to reconsider this ill-advised course of action and withdraw the proposed regulations.

I The Bureau's Proposal Exceeds Its Legal Authority Under Penal Code § 330.11 and the Gambling Control Act

Penal Code § 330.11 allows cardrooms to operate player-dealer games provided that the opportunity to bank rotates among participants. The statute does not require that every player accept the dealer position or that a mechanical rotation mechanism be in place. This interpretation has been upheld through court decisions, DOJ GEGA approvals, and over two decades of operational practice.

The Bureau's attempt to redefine this statute through vague terms like 'meaningful opportunity' or 'mechanism to compel rotation' exceeds the agency's statutory authority. Business and Professions Code § 19826 directs the Bureau to enforce laws, not rewrite them. Nothing in § 330.11 empowers the Bureau to prescribe how often players must bank or penalize cardrooms when players decline the role. The Bureau is not authorized to impose a rigid structure where the Legislature has explicitly allowed flexibility.

Moreover, Business and Professions Code § 19943.5 protects licensees who operate under game rules approved by the Bureau. Penalizing these licensees by invalidating approved conduct would violate due process and undermine the integrity of the Bureau's prior guidance. The DOJ's current proposal represents a sweeping and unauthorized policy shift that imposes new legal obligations not enacted by the Legislature, nor supported by case law.

In *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, the Court of Appeal held that a "banking game" prohibited under Penal Code § 330 occurs only when a participant, typically the house, consistently covers all bets, collects from losers, and pays winners. The court distinguished this from legal games involving third parties, where the house does not participate and banking duties rotate among players.

This principle was reaffirmed in *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, where the court examined a Newjack game and ruled that it would only constitute an illegal banking game if one player continually acted as the bank. As long as rotation was systematic and the house abstained from play, the structure remained lawful.

The DOJ's proposal attempts to rewrite these judicially settled standards by imposing undefined concepts, such as "meaningful opportunity to bank," and requiring mechanisms to compel rotation. These additions are not supported by the statute or its legislative history and represent an overreach of authority.

Furthermore, § 19943.5 protects licensees from discipline when operating under approved rules. This is undermined by retroactively classifying prior DOJ-approved conduct as unlawful. The courts have made it clear that statutory exemptions to criminal laws must be read broadly, and any agency action narrowing those exemptions requires explicit legislative authorization, which is absent here. See *People v. Garcia* (1999) 21 Cal.4th 1, 10 [penal statutes are construed narrowly, while exemptions are construed broadly]; *People v. Fong* (1993) 17 Cal.App.4th 660, 664 [exemptions must not be narrowed through added agency conditions]; and Gov. Code § 11342.2 [agency regulations must not alter or enlarge the scope of statutory law].

There is no indication in the statute or legislative history that the Legislature intended to restrict the manner, frequency, or mechanics by which the rotation must occur. The DOJ's interpretation and proposed regulations represent an unauthorized narrowing of the statute by an agency without authority to make such a change in the law.

II. No Demonstrated Necessity, No Public Safety Justification

Under the California Administrative Procedure Act (APA), an agency must demonstrate, by substantial evidence, that a proposed regulation addresses an actual problem, such as a pattern of abuse, consumer harm, or regulatory failure. Absent such evidence, regulatory

changes that disrupt established practices are unlawful. (See Gov. Code §§ 11349, 11349.1, 11346.2(b); *California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 309.)

The DOJ has not identified any pattern of abuse, consumer harm, or regulatory failure associated with current player-dealer rotation practices. The ISOR and revised SRIA lack evidence indicating that the status quo has led to misconduct or eroded public confidence. Instead, the DOJ is advancing an arbitrary change for which it admits there will be collateral damage.

The 2024 Revised SRIA acknowledges that the proposed rules will result in operational upheaval, revenue loss, and job cuts, particularly in smaller and mid-sized cardrooms. When regulations admit to harming local economies without a compelling government interest, they are not just misguided; they are unlawful. The APA requires that agencies demonstrate both necessity and proportionality. Here, the Bureau has done neither.

In 2017, the Office of Administrative Law struck down a similar DOJ attempt as an underground regulation.(See Office of Administrative Law, Determination No. 2 (July 24, 2017), Matter No. CTU2017-0112-01, concluding that the DOJ's 2016 memorandum on player-dealer rotation constituted an underground regulation in violation of Gov. Code §§ 11340.5(a) and 11342.600.) The new proposal, while submitted through formal channels, still fails to cure the same core deficiencies: lack of clarity, lack of statutory authority, and absence of necessity. Agencies do not gain new powers simply by repeating old errors in a new format.

III. Disruption to Longstanding Practices and Ignored Alternatives

The DOJ's current proposal also overlooks nearly two decades of collaborative regulatory development and good faith industry engagement in crafting functional, lawful alternatives. One such alternative, player trust, provides a structured and supervised method for holding and disbursing funds without violating the statutory prohibition on house-banked games. This model ensures transparency, regulatory oversight, and fairness while preserving the core principle of rotating player-dealers, as outlined in Penal Code § 330.11. Despite its viability, the DOJ has not acknowledged or evaluated this approach in the current rulemaking process.

The DOJ has failed to provide evidence that current player-dealer rotation practices have led to regulatory abuse, consumer harm, or increased litigation. No public safety concern, regulatory breakdown, or complaint pattern has been demonstrated in the Initial Statement of Reasons or the revised Standardized Regulatory Impact Assessment (SRIA).

Additionally, the DOJ has offered no justification for restricting multiple third-party proposition player companies from participating at the same table. This kind of arbitrary

limit on TPPS operators would stifle innovation and flexibility in game offerings, reduce operational efficiency, and potentially diminish the availability of games to patrons.

Worse still, these regulations may have the unintended consequence of encouraging unlicensed individuals to serve as player-dealers, thereby maintaining gameplay continuity and introducing serious public safety and compliance risks. For decades, the use of licensed, vetted TPPS entities has ensured integrity and traceability. This rulemaking would disrupt that system without offering a more secure or practical alternative.

Appendix A of the ISOR reflects consistent industry concerns and no substantial support for change. Despite these comments, the DOJ has neither meaningfully addressed these concerns nor explored narrower, less disruptive regulatory alternatives.

For more than twenty years, Lucky Chances and other cardrooms have operated under DOJ-approved Game and Gambling Establishment Approval (GEGA) rules that structure rotation opportunities in accordance with Penal Code § 330.11. These rules were reviewed and authorized by the Bureau without issue. To now deem them unlawful is both unjust and destabilizing. These restrictions contradict the CGCC's 2009 regulatory model, which prioritized accountability over arbitrary limits. Worse, the DOJ ignores viable alternatives, such as the Player Trust model, that could address concerns without overreach or disruption.

IV. Disproportionate Economic and Operational Impact

The proposed regulations also effectively prohibit games involving a single player due to the mandatory rotation requirement. Under the proposed rules, a single-player scenario cannot comply, as there would be no opportunity to rotate the dealer position among multiple participants. This restriction unnecessarily limits consumer choice and operational flexibility, effectively banning single-player games without providing any legal or practical justification. Such an arbitrary limitation further illustrates the DOJ's overly prescriptive approach and lack of sensitivity to the real-world operation of regulated gaming establishments.

The proposed regulations would require dealers to rotate more frequently and eliminate third-party provider services if compensation is deemed to inhibit "true" rotation. This will likely reduce the availability of certain games, limit consumer choice, and drive revenue declines.

According to the 2024 Revised SRIA, these rules could affect a substantial share of table game revenue, undermine local tax revenue, force layoffs, and destabilize smaller cities that depend on cardroom-generated jobs and municipal funding.

For Lucky Chances, this proposal would necessitate the restructuring of table operations, staffing, and third-party service contracts, all without any measurable benefits to the public.

V. APA Violations and Procedural Deficiencies

As stated above, the DOJ's process violates the APA. Key terms are vague and undefined, the proposed regulations duplicate existing GEGA oversight, and there is no demonstrated necessity.

Moreover, limiting public comment at a hearing to two minutes in a virtual, audio-only format further excluded many stakeholders, particularly non-English-speaking workers in this industry. The DOJ's actions remain arbitrary and capricious, as well as violating the public's right to be meaningfully heard.

CONCLUSION

The proposed player-dealer regulations impose unlawful and unworkable requirements that lack legal authority, factual support, and economic justification. We urge the Bureau to withdraw the proposal and instead engage with stakeholders on lawful, collaborative alternatives that protect both the integrity of the law and the economic health of California communities.

Thank you for your consideration.

Sincerely,

Jarhett Blonien on behalf of
Lucky Chances Casino

Napa Valley Casino

California Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
E-mail: BGC_Regulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games;
Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

Dear Director Yolanda Morrow and Ms. Andreia McMillen:

We, at **Napa Valley Casino**, employ **102** and contribute **approximately $325,000** in direct taxes to our local communities. We are writing to express our serious concerns regarding the recently proposed draft regulations on April 11, 2025, focused on blackjack-style games and the rotation of the player-dealer position.

We align with the objections raised by Munger, Tolles & Olson LLP on behalf of the California Gaming Association, Communities for California Cardrooms, and the California Cardroom Alliance, emphasizing that the draft regulations lack legal support and exceed the Bureau's statutory authority under the Gambling Control Act. These changes, unsupported by statute or case law, would have a detrimental impact on the cardroom industry, jeopardizing jobs and the local economies that benefit from our operations.

Moreover, the focus of the Bureau should be directed towards curbing the proliferation of unlicensed gambling locations that operate outside the legal framework, rather than imposing unsupported punitive regulations on compliant cardrooms. The discrepancy between the lack of enforcement against illegal activities and the effort spent on these draft regulations is concerning and suggests a misalignment with the Bureau's mandate to ensure legal gaming practices.

Our cardroom not only provides significant tax revenues but also supports local public services critical to our community, including police, fire protection, parks, schools, non-profit programs, and other critical resident services. The proposed changes harm our communities, jobs, and quality of life.

In addition to these unsupported draft regulations, my business and every other cardroom in the state are spending time and resources preparing to defend against litigation filed by seven of the largest and wealthiest tribal casinos due to the passage of Senate Bill 549.

We ask the Bureau to reconsider the proposed draft regulations, focus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy.

We appreciate your consideration.

Von Altizert
Owner
Napa Valley Casino

RECEIVED
MAY 20 2025
Bureau of Gambling Control

California Department of Justice, Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
E-mail: BGC_Regulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games;
Comments on Proposed Regulations Concerning Rotation of the Player-Dealer Position

Dear Director Yolanda Morrow and Ms. Andreia McMillen:

We, at Ocean's Eleven Casino, employ 300 and contribute over $1 million in taxes to our local communities. We are writing to express our serious concerns regarding the recently proposed draft regulations on April 11, 2025, focused on blackjack-style games and the rotation of the player-dealer position.

We align with the objections raised by Munger, Tolles & Olson LLP on behalf of the California Gaming Association, Communities for California Cardrooms, and the California Cardroom Alliance, emphasizing that the draft regulations lack legal support and exceed the Bureau's statutory authority under the Gambling Control Act. These changes, unsupported by statute or case law, would have a detrimental impact on the cardroom industry, jeopardizing jobs and the local economies that benefit from our operations.

Moreover, the focus of the Bureau should be directed towards curbing the proliferation of unlicensed gambling locations that operate outside the legal framework, rather than imposing unsupported punitive regulations on compliant cardrooms. The discrepancy between the lack of enforcement against illegal activities and the effort spent on these draft regulations is concerning and suggests a misalignment with the Bureau's mandate to ensure legal gaming practices.

Our cardroom not only provides significant tax revenues but also supports local public services critical to our community, including police, fire protection, parks and other critical resident services. The proposed changes harm our communities, jobs, and quality of life.

In addition to these unsupported draft regulations, my business and every other cardroom in the state are spending time and resources preparing to defend against litigation filed by seven of the largest and wealthiest tribal casinos due to the passage of Senate Bill 549.

We ask the Bureau to reconsider the proposed draft regulations, focus on enforcing existing laws against illegal gambling, and engage with stakeholders to find a resolution that upholds the legal gaming industry's role in supporting California's economy.

We appreciate your consideration.

Sincerely,

Mark Kelegian
President
Ocean's Eleven Casino

To: BGC_Regulations
Subject: Blackjack hearing comments
Date: Thursday, May 29, 2025

Here are my comments from today.

My name is John Park. I've been approved for over 10 gaming licenses in California, and Parkwest Casinos employs 2,000 hardworking, tax-paying team members.

I started playing blackjack as a recreational player in California cardrooms in 1995. At the time, tribal casinos were offering blackjack with third-party providers because they didn't yet have legal authority for Class III gaming. That changed when Proposition 1A passed in 2000.

The blackjack tribal casinos offered then and what they offer now are completely different. Today, they run house-banked blackjack—where the house sets the odds and keeps the net win. That's very different from the blackjack I started playing 30 years ago, and the kind cardrooms offer today, which uses a player-dealer rotation model open to anyone at the table.

It's ironic that the Bureau is trying to ban how we play—the same structure tribes used before 2000—while allowing those same casinos to offer craps and roulette, which remain banned under California law.

In 2022, tribes asked voters to legalize those games through Proposition 26. The public rejected it—67% voted no. Yet those games continue at tribal casinos, with no enforcement from the Attorney General.

Why is the Bureau targeting licensed, tax-paying cardrooms that support public services—while ignoring non-tax-paying casinos openly violating the law and the will of the voters?

That's discriminatory.

Parkwest's newly acquired cardrooms submitted the same blackjack games already approved and played in our other locations. But we never received approval—or even a response—from the Bureau.

By regulation, the Bureau is supposed to act within 90 days once a request is deemed complete. It's been over three years. No approval. No denial. No clarification.

Meanwhile, illegal gambling parlors are popping up across the state—unlicensed and unchecked.

So I ask: What is the Bureau of Gambling Control doing?

According to the Bureau's own mission statement:

"The Bureau's mission is to ensure the integrity of gambling in California—by keeping it honest, competitive, and free from criminal and corruptive elements."

What's happening isn't consistent with that mission—or the will of the voters.

This isn't about law or fairness. It's about politics.

Thank you.

To: BGC_Regulations

Subject: Rotation hearing comments
Date: Thursday, May 29, 2025 3:19:14 PM

Here are my comments from the Bureau's hearing about rotation.

My name is John Park, I currently hold over 10 gaming licenses in California. Parkwest Casinos employs 2,000 team members. The taxes we pay fund nearly half of the annual budget for Bell Gardens—a working-class city that relies heavily on this revenue to support schools, fire, police, and infrastructure.

I started in 1995 as a player with an $800 paycheck to take the OPTIONAL player-dealer position as often as I could. Like every other player, I had the opportunity to take that position.
Anyone could do it then, and anyone can do it now.

Fun Fact. Before the year 2000—before the passage of Proposition 1A—EVEN tribal casinos used rotation in their blackjack games because they, too, were relying on the same law of the land.

Currently, the opportunity to play the player-dealer position doesn't exist in tribal casinos and never existed in Las Vegas. There, the games ARE HOUSE-banked. The odds are not equal, and if you win too much, you can be barred by the casino. There's no fairness in that.

Fairness is the foundation of California's cardroom model. It's why five Attorneys General have approved the structure of rotation and blackjack rules.

Every single game and rule I've implemented across my six cardrooms has been reviewed and approved by the Attorney General's office—including by the current one. So what has changed?

I believe it's political. There appears to be pressure to consolidate all gambling under tribal control, even though cardrooms have been part of California's history since the Gold Rush.

Decisions by the Attorney General and the Department of Justice should be based on fairness and law—not politics, money, or influence.

Thank you.

May 29, 2025

VIA E-MAIL AND U.S. MAIL
BGC_Regulations@doj.ca.gov

Director Yolanda Morrow
Andreia McMillen, Regulations Coordinator
California Department of Justice
Bureau of Gambling Control
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

Re: *Parkwest Bicycle Casino Comments on Proposed Regulations Concerning Blackjack and Rotation of the Player-Dealer Position*

Dear Director Morrow and Ms. McMillen:

On behalf of Park West Casinos, I write to provide comments on the proposed regulations issued by the Bureau of Gambling Control ("Bureau") concerning blackjack and rotation of the player-dealer position ("Proposal"). The Bureau should not move forward with its Proposals.

Blackjack:

First, the Proposal is procedurally improper because the Bureau is not authorized to adopt a regulation that categorically prohibits a certain type of game, or to revoke permits for games that the Bureau has already approved. (See, *Security Nat. Guaranty, Inc. v. Cal. Coastal Com.* (2008) 159 Cal.App.4th 402, 419.)

Second, no statutory basis exists for the Bureau to adopt the proposed restrictions on blackjack-style games. "Twenty-One" and blackjack are different games, and blackjack has never been listed as a game prohibited by Penal Code section 330. Because Penal Code section 330 prohibits "twenty-one" and says nothing of "blackjack," the Bureau cannot properly read blackjack-style games into the statute. (*TRC Operating Co., Inc. v. Chevron USA, Inc.* (2024) 102 Cal.App.5th 1040, 1075.)

Third, The Bureau has failed to identify any legitimate need for the proposed regulations. To meet the APA's "[n]ecessity" requirement, the Bureau must put forth "substantial evidence" demonstrating that a proposed regulation is necessary "to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific." (Gov. Code §§ 11349(a) and 11346.2 (b).) The Bureau has never adequately identified any court precedent or regulatory policy necessitating its proposed regulations defining and

restricting blackjack; or how the restrictions effectuate the Penal Code's prohibition on "twenty-one."

In particular, Parkwest Bicycle Casino and Parkwest Casino Manteca each submitted game approval applications to the Bureau for the game of "Blackjack X" in June 2021. Blackjack X was also already approved for play at other Parkwest properties. The Bureau designated the applications "complete" by April 2022. Yet, the Bureau has never taken any action on the applications despite its statutory duty to act within 90 days (Bus. & Prof. Code § 19826(a); 11 C.C.R. 2071(b); *see also*, Civ. Code § 1657; *Porphyry Paving Co. v. Ancker* (1894) 104 Cal. 340, 343 [when not specified, performance is "within a reasonable time."].) Despite Parkwest's repeated appeals, the Bureau has not approved the applications. Nor has it been able for more than three years to identify the legal and statutory justification for denial. It is similarly unable to do so now.

Fourth, the Proposal is based on a flawed economic assessment, which vastly understates the adverse effects that the Proposal will have on cardrooms, TPPPPS, California workers, and local communities.

Rotation of Player-Dealer Position:

First, the Bureau is not authorized to adopt a regulation that categorically prohibits games featuring a player-dealer position that do not meet specific criteria defined by the Bureau. (*Security Nat. Guaranty, Inc. v. Cal. Coastal Com.* (2008) 159 Cal.App.4th 402, 419.) The Proposal amounts to a statewide prohibition on all player-dealer games that do not include the Bureau's selected rules, which the Bureau is not authorized to do. (See, Bus. & Prof. Code §§ 19841 and 19842.)

Second, the Bureau lacks the statutory authority to unilaterally revoke an existing game approval without an adjudicatory determination that the game is unlawful. (Bus. & Prof. Code, § 19826(g); 4 C.C.R. §12550(f).) The Proposal also threatens a cardrooms' due process rights.

Third, the Proposal does not address how a player-dealer game qualifies as a banked game. A banking game is one in which "there is a person or entity that participates in the action as 'the one against the many,' ... 'taking on all comers, paying all winners, and collecting from all losers' ... , doing so through a fund generally called the bank." (*Hotel Employees and Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 592 (HERE).) Player-dealer games meet none of the three conditions announced in HERE for a banking game, let alone all three.

Lastly, the Proposal does not provide substantial evidence—or, indeed, any evidence—to support the "need" for the proposed regulations. The Proposal never says why, after the Bureau approved offer-only player-dealer games for decades, those same games must now be restricted or any changes in the law since the Bureau's last approval that might justify the change.

PARKWEST CASINOS

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The Bureau has for many years approved blackjack-style games and offer-only player-dealer games for play in licensed cardrooms because those games are legal under California law. Nothing in the Proposals offer any reason to conclude otherwise. To the contrary, the Proposals plainly conflicts with the governing statutes, settled judicial precedent and the Bureau's own interpretation of section 330, dating back 120 years. The Bureau should not proceed with the Proposals.

Very truly yours,

[redacted]

John Park
Owner

ELEVATION
ENTERTAINMENT

May 29, 2025

Via E-Mail to BGC_Regulations@doj.ca.gov

Director Yolanda Morrow
Bureau of Gambling Control
California Department of Justice
Attention: Regulations
2450 Del Paso Road, Suite 100
Sacramento, CA 95834

Re: Comments on Proposed Regulations Concerning Blackjack-Style Games; and Rotation of the Player-Dealer Position

Dear Director Morrow:

Elevation Entertainment Group submits this letter on behalf of our three cardrooms: Seven Mile Casino, The Saloon at Stones Gambling Hall, and The Tavern at Stones Gambling Hall. Collectively, we employ over 750 people in our cardrooms and annually pay almost a million dollars in table taxes and other fees to our local governments.

We write this comment to strongly oppose the proposals on both blackjack and the rotation of the Player-Dealer Position. We agree with the statements, legal authority, and supporting exhibits set forth in the letters submitted by Munger, Tolles & Olson LLP on behalf of multiple industry groups. The contents of those letters are incorporated by reference.

We would like to highlight a few items: (1) the proposed Player-Dealer regulations are improper, unlawful, and contrary to legislative intent; (2) the Bureau's continued approval of the games played over the last 25 years created a vested right, upon which we relied, and (3) the Bureau has failed to comply with the requirements to qualify these regulations for adoption.

First, the proposed Player-Dealer regulations are inconsistent with the enabling statutes and legislative intent. When the legislature removes language from a bill, the removed language cannot become the legal standard for interpreting the statute.

> The evolution of a proposed statute after its original introduction in the Senate or Assembly can offer considerable enlightenment as to the legislative intent. … Generally, the legislature's rejection of a specific provision which appeared in the original version of an Act supports the conclusion that the Act should not be construed to include the omitted provision.

People v. Goodloe (1995) 37 Cal.App.4th 485, 491–92 [citations omitted].

Consistent with this legal principle, the Bureau has never construed Penal Code section 330.11 to require a new player to accept the player-dealer position. Doing so would ignore the legislative history of AB 1416 where the legislature ***removed*** similar requirements.

Rather, for over two decades the Bureau has correctly interpreted Section 330.11 to permit game rules where the opportunity to be the player-dealer position rotates after every two hands, even if at times all the other players refuse the position, and it returns to the same person again. Where an agency has construed a statute, courts will generally respect the agency's consistent interpretation.

> While the ultimate interpretation of a statute is an exercise of judicial power and it is the responsibility of the courts to declare its true meaning …, the contemporaneous construction of a statute by an administrative agency charged with its administration and interpretation, while not necessarily controlling, is entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized …. This is true particularly where there has been continued public reliance upon the acquiesces in such interpretation.

City of Santa Ana v. City of Garden Grove (1979) 100 Cal.App.3d 521, 530. Here, not only has the Bureau had a consistent interpretation for over two decades, but there has been industry-wide reliance on that interpretation. (*Compare, Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Caol.4th 1, 13 [additional deference due if an "agency has consistently maintained the interpretation in question, especially if it is long-standing"] *with Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1106 [minimal deference due when agency adopts a new statutory interpretation that "flatly contradicts its original interpretation"].)

Second, we relied on these interpretations when making the decision to invest over $100 million in this industry in order to operate our cardrooms and employ hundreds of people – 50% are Asian Pacific Islanders, 25% are Hispanic or Latino, and 10% are African-American. Prior to entering this industry we conducted a significant amount of due diligence into the industry. That due diligence included reviewing the

case law, the statutes, the regulatory and approval process, and the games. Our conclusion was and is that the games as played are legal, and that was reaffirmed by the fact that the Bureau reviewed and licensed those games for play in California Cardrooms we were ultimately approved to own.

In reliance on a long-standing history of approvals in the local jurisdictions before the Gambling Control Act and by the Bureau after its enactment, we participated in the lengthy background process and submitted game rules to play at our three cardrooms. The Bureau conducted a thorough review, held discussions with our designated agents, and approved *each and every game* that we offer. By licensing the games and our business, we have a vested interest in being able to operate consistently with those approvals.

"Under California law, the continued operation of an established, lawful business is subject to heightened protections."[1] In *Goat Hill Tavern v. City of Costa Mesa*, a conditional use permit for a tavern expired and the City of Costa Mesa denied an extension. The court stated:

> Once a use permit has been properly issued the power of a municipality to revoke it is limited. Of course, if the permittee does nothing beyond obtaining the permit it may be revoked. Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled. When a permittee has acquired such a vested right it may be revoked if the permittee fails to comply with reasonable terms or conditions expressed in the permit granted [citations] or if there is a compelling public necessity. A compelling public necessity warranting the revocation of a use permit for a lawful business may exist where the conduct of that business constitutes a nuisance. By simply denying renewal of its conditional use permit, the city destroyed a business which has operated legally for 35 years.[2]

Our cardrooms game approvals are analogous to the conditional use permit at issue in *Goat Hill Tavern* under well-established state and federal administrative law *E.g., Avco Community Developers, Inc. v. South Coast Regional Com*. (1976) 17 Cal.3d 785, 791 ("if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right…"), *citing, Dobbins v. City of Los Angeles* (1904) 195 U.S. 223 (14th Amendment forbade application of zoning ban on gasworks to site in which substantial

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[1] *County of Santa Clara v. Superior Court* (2010) 50 Cal. 4th 35, 53.
[2] *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1523-1524, citing *O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal. App. 3d 151, 158; *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal. App. 2d 776; see also *Upton v. Gray* (1969) 269 Cal. App. 2d 352; *Community Development Com. v. City of Fort Bragg* (1988) 204 Cal. App. 3d 1124.

investment previously made). The Bureau has consistently reviewed and approved games for our cardrooms and our predecessors. There has been no change in law that warrants a new, harsh, and restrictive interpretation.

The issue of a vested right arises when a government agency changes a regulation to prohibit existing conduct. That is precisely what the Bureau intends to do here. There is no basis for the change in interpretation of the law.

Third, these proposals do not comply with the Government Code. For almost a decade the Bureau has held meetings, conducted workshops, and participated in other means of informal rule making. Throughout that process the industry, both individual members and collectively as a group, has submitted a substantial amount of detailed analysis, including statutory history and case law, that supports the legality of our games and the approvals under which we offer games to the public.

Despite these significant efforts, the Bureau and Attorney General has failed to provide *any* legal response for revisions to how the games are reviewed and approved. It has also failed to provide the *actual reasons* and need for these new regulations, the statutory/legal authority for the Bureau's proposed actions after decades of contrary interpretation, and a full explanation as to why these regulations are the least restrictive means for achieving that Bureau's unstated goal. To be clear, the proposals do include "reasons" but they are limited to law and case citations that support the basis for why the games as they are currently played were approved. However, they are silent as to what has changed to warrant such draconian regulations now.

The proposed regulations contradict two decades of regulatory approvals, and ignore the precedent that pre-dates enactment of the Gambling Control Act (the "Act").

California Government Code section 11346.2 has very specific requirements for an agency that wishes to adopt new regulations. Subsection a, subpart 2 states:

> The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(Cal. Gov. Code § 11346.2.) The authorizing statutes and case law cited in the concept regulations do not support the proposal. Further, the proposals are contradictory to existing statutes within the Act and the regulations already enacted to implement the Act.

Section 11346.2, subsection b, also requires, in pertinent part:

An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal, **the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed**. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) …

> (B) For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis required by subdivision (c) of Section 11346.3.

> (3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4)

> (A) **A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives**. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed

> regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.
>
> (B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.
>
> (C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.
>
> …

(Cal. Gov. Code § 11346.2, *emphasis added*.) The Bureau is required to identify the problem it needs to address, the rationale for its determination, and an explanation of why it is reasonably necessary. The proposals do not meet these requirements.

Further, the Bureau has provided zero explanation as to what standard was used between 2000 and today when approving game rules and why the proposed regulations are not consistent with that framework. The Bureau is required to articulate the grounds that it used to review games and explain why that standard was not adopted into the regulation. Additionally, the Bureau is required to identify the version of twenty-one it is using as the basis for the blackjack regulations, ***including when that version of twenty-one was published***.

The Bureau has failed to meet the mandated requirements to adopt new regulations and has refused to provide persuasive legal authority and reasoning. This failure makes the proposed regulations unlawful, and confirms the industry's conclusion that the proposal is purely political.

We continue to urge the Bureau to engage in an interactive process. As mandated by the Government Code, the first step requires the Bureau to provide its reasoning.

Sincerely,

Heather U. Guerena