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9
10 **BEFORE THE**
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**
12 **STATE OF CALIFORNIA**

13
14 **In the Matter of the Accusation and**
15 **Statement of Issues Against:**

16 **GARDEN CITY, INC., doing business as**
17 **CASINO M8TRIX (GEGE-000410);**

18 **ERIC G. SWALLOW (GEOW-001330);**

19 **PETER V. LUNARDI III (GEOW-001331);**

20 **JEANINE LYNN LUNARDI (GEOW-**
21 **003119); and**

22 **THE LUNARDI FAMILY LIVING**
23 **TRUST, dated August 27, 2008 (GEOW-**
24 **003259).**

25 **1887 Matrix Boulevard**
26 **San Jose, CA 95110**

27 **Respondents.**

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

COMPLAINANT'S REPLY BRIEF

1 INTRODUCTION

2 This case focuses on conduct that goes to the very heart of effective regulation in a
3 highly regulated industry where character, honesty, and integrity count and monies cannot be
4 shared with unlicensed persons. The evidence shows that the continued licensing of
5 Respondent Eric G. Swallow (Respondent) undermines the public trust that gambling is free of
6 corruptive elements and is carried on only by suitable licensees. Dishonesty with regulators
7 simply cannot be tolerated.

8 Therefore, Complainant Wayne J. Quint, Jr. (Complainant) requests that the Judge
9 recommend to the California Gambling Control Commission (Commission) that Respondent's
10 state gambling license (GEOW-001330) be revoked, that his renewal application be denied, that
11 a fine in the range of \$4,659,000 to \$18,815,000 be imposed, and that the Bureau of Gambling
12 Control's (Bureau) costs and fees be awarded. That recommendation is essential to protect the
13 public interest in keeping the highly regulated business of gambling honest and competitive,
14 and free of criminal and corruptive elements (Bus. & Prof. Code, § 19801, subd. (g)), and to
15 promote the full and truthful disclosure that is the foundation for licensing and enforcement (see
16 Bus. & Prof. Code, § 19866). The evidence is clear that, among other things, in derogation of
17 statutory obligations, Respondent provided untruthful and misleading information to, and failed
18 to provide information and documents requested by, the Bureau. Additionally, Respondent
19 indirectly received payments prohibited by the Gambling Control Act (Bus. & Prof. Code, §
20 19800 et seq.) (Act). He also provided untrue and misleading information to the Commission
21 and the City of San Jose.

22 Respondent's closing brief does not change Complainant's request, nor should it change
23 the recommendation made by the Judge. First, Respondent does not contest many facts and
24 causes for discipline or denial of renewal. Second, Respondent raises several arguments,
25 including, among others: (1) Respondent's license, as a shareholder of Garden City, Inc.
26 (Garden City), was renewed by operation of law; and (2) his failure to fulfill his statutory duties
27 is limited to the specific license application in which he was untruthful or breached his statutory
28 duties. All of Respondent's arguments have no merit and should be rejected. Finally,

1 Respondent contests certain facts. As is clear from the overall evidence, Respondent's
2 portrayal of the facts is incorrect, and should be rejected.

3 For the reasons set forth in this reply and in Complainant's closing brief, the Judge
4 should recommend that the Commission grant all requested remedies.

5 **THE UNCONTESTED FACTS AND CAUSES FOR DISCIPLINE**
6 **OR DENIAL OF RENEWAL REQUIRE REVOCATION AND DENIAL**

7 In his closing brief, Respondent does not address, and thus does not contest, certain facts
8 or causes for discipline. The Commission's regulations and the Act require mandatory
9 revocation of Respondent's state gambling license and mandatory denial of its renewal
10 respectively. (Cal. Code Regs., tit. 4, § 12568, subd. (c); Bus. & Prof. Code, § 19859, subds.
11 (a) & (b); Cal. Code Regs., tit. 4, Appendix A foll. § 12572.) As to the uncontested matters, the
12 requested relief should be recommended.

13 **A. Second Cause for Discipline and Denial of Renewal – Respondent Provided**
14 **Untruthful or Misleading Information**

15 The evidence showed that Respondent was not truthful about his marital status.
16 (Complainant's Closing Brief (CCB), pp. 17-20.) He does not contest that in 2012, he provided
17 the Bureau and the City of San Jose with applications stating that he was married. He does not
18 contest that he later submitted an application stating that he was separated. He does not contest
19 that he told the Bureau that he and Mrs. Swallow have been separated since either 2009 or
20 2010. He does not contest that in a dissolution filing, he stated his separation date was October
21 8, 2013. He does not contest that he and Mrs. Swallow lived together from 2009 to 2013. In
22 sum, he concedes all of the facts showing he was untruthful.¹

23 The evidence showed that Respondent was not truthful about the interrelationship
24 between his and Mrs. Swallow's business affairs. (CCB, pp. 23-26.) Respondent does not
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26 ¹ Respondent apparently only contests the date of separation. (Respondent Eric
27 Swallow's Closing Brief (RCB), pp. 31-33.) Respondent apparently does not contest whether
28 "separated since approximately" or "consider themselves separated effective approximately"
implies a date on which separation began or a continuing separation.

1 contest whether his and Mrs. Swallow's business affairs were intertwined. He does not contest
2 the numerous documents signed by both him and Mrs. Swallow with Comerica Bank.
3 Respondent does not contest that Secure Stone LLC (Secure Stone) was one of his companies
4 or one of his affiliated companies. In sum, he concedes facts showing that he was untruthful
5 when he represented that his and Mrs. Swallow's business affairs were separate.²

6 The evidence showed that the Grant Thornton Report (GT Report) (Exh. 20) was false
7 and misleading. (CCB, pp. 30-34.) Respondent does not contest that evidence. He does not
8 contest that the GT Report was addressed to him and provided for his use for compliance
9 purposes. He does not contest that the GT Report stated that it was based on information
10 provided by Garden City and Respondent or that the GT Report states the information was not
11 verified. In sum, Respondent concedes facts showing that the GT Report, submitted by him for
12 compliance purposes, was false and misleading.³

13 **B. Third Cause for Discipline and Denial of Renewal – Respondent Failed To Provide**
14 **Information and Documentation Requested by the Bureau Chief**

15 The evidence shows that the Bureau⁴ requested information and documentation from
16 Respondent that he failed to provide. (CCB, pp. 37-39.) For the most part, Respondent does

17 ² Respondent contests whether the Buy-Sell Agreement that he and Mrs. Swallow
18 entered into with Peter and Jeanine Lunardi (collectively, the Lunardis) gave her an interest in
19 Garden City. (RCB, pp. 34-37.) That agreement unequivocally shows Mrs. Swallow's interest
20 in Garden City. Even though he claims no knowledge of the John Maloney July 10, 2013 letter
21 (Exh. 10) when it was sent, Respondent never has disputed, and does not dispute, that Mr.
22 Maloney was his attorney, and was acting as his agent.

23 ³ Even though it was addressed to him and is contrary to the GT Report's recitals,
24 Respondent contests whether the GT Report's false and misleading statements are attributable
25 to him. (RCB, pp. 41-42.)

26 ⁴ No dispute exists that under the Act, "Chief" refers to the Chief of the Department of
27 Justice's Bureau of Gambling Control. (See Bus. & Prof. Code, § 19805, subd. (d).) The
28 Bureau acts on behalf, and under the authority, of the Chief, who in turn acts through the
Bureau. Respondent argues that for purposes of Business and Professions Code section 19859,
subdivision (b), the Chief must make the request. But Respondent equates the Bureau and the
Chief, when it otherwise suits Respondent's needs. Respondent argues that the Bureau, not the
Chief, violated Business and Professions Code section 19868. (RCB, p. 15.) Section 19868
refers to the Chief preparing and filing a report and meeting with the applicant, or the
applicant's duly authorized representative. (Bus. & Prof. Code, § 19868, subs. (b) & (c).)
Consequently, Business and Professions Code section 19859, subdivision (b), appropriately
means the failure to provide documents and information requested by the Bureau.

1 not contest that he failed to provide the requested information or documentation. In fact, he
2 concedes that he failed to provide information requested by Bureau's Requests Nos. 30, 32, 35,
3 69, and 70.⁵

4 **C. Fourth Cause for Discipline and Denial of Renewal – Respondent Is Unqualified**
5 **for Licensure**

6 The evidence showed that Respondent provided untrue or misleading information to the
7 City of San Jose. (CCB, p. 40.) Respondent does not contest that he failed to disclose his
8 interest in Secure Stone. Respondent does not contest that Secure Stone's agent, Bryan
9 Roberts, was evasive and refused to answer certain questions asked by the City's investigator.
10 In sum, Respondent concedes facts showing that he did not comply with the City's ordinance.⁶

11 **RESPONDENT'S LEGAL ASSERTIONS LACK MERIT**
12 **AND SHOULD BE REJECTED**

13 **A. Respondent's State Gambling License Was Not Renewed by Operation of Law;**
14 **Therefore, his Application for Renewal Is Before the Judge**

15 Respondent argues that his state gambling license was renewed by operation of law
16 because the Commission failed to deny his application. This is contrary to the Act's
17 comprehensive regulatory scheme that protects the public health, safety, and welfare. (See Bus.
18 & Prof. Code, § 19801, subs. (g), (h), (i), (k).) Respondent's argument also is contrary to the
19 Commission's statutory responsibility to assure that "there is no material involvement, directly
20 or indirectly, with a licensed gambling operation, or the ownership and management thereof, by
21 unqualified or disqualified persons." (Bus. & Prof. Code, § 19823, subd. (a)(2).)

22 Respondent's argument also is contrary to the Commission's actions taken in connection
23 with his licensure. Rather than deny renewal of Respondent's license, as recommended by the

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25 ⁵ Respondent contests whether the conceded omissions are punishable and asserts that
26 those omissions "are understandable." (RCB, pp. 43-45.) But, as the Act and regulations make
27 clear, revocation of Respondent's license and denial of renewal are mandatory when an
28 applicant fails to provide requested information or documents.

⁶ Respondent contests the facts regarding Dolchee LLC's (Dolchee) ownership. (RCB,
p. 47.) These facts are discussed below.

1 Bureau, the Commission referred the renewal application to an evidentiary hearing to be
2 consolidated with the pending accusation. (Exh. AO, p. AO-2; see Exh. 2, p. 2-1 [state
3 gambling license stayed pending outcome].) Later, after approving the settlement with Garden
4 City, the Lunardis, and their trust (Lunardi Trust), the Commission endorsed Garden City's
5 license to include: "*Eric Swallow – Secretary, Director (stayed pending adjudication of the
6 Accusation)." ⁷ (Exh. 2, p. 6.) Clearly, the Commission did not consider Respondent's license
7 to be renewed.

8 For the foregoing reasons, the Judge should reject Respondent's argument that his state
9 gambling license was renewed by operation of law. It clearly was not. Rather, the Commission
10 referred the renewal to hearing, and the renewal is before the Judge.

11 **B. Statutory Duties and Suitability Are Not Compartmentalized**

12 Respondent argues that the statutory duty of full and true disclosure, and disqualification
13 for licensure grounds, are compartmentalized – i.e., limited to a single license. Under
14 Respondent's argument, being found untruthful with respect to his Hollywood Park Casino
15 application cannot be used, or considered, with respect to his Garden City application or
16 suitability for licensure. This argument is contrary to the comprehensive regulatory scheme
17 embodied in the Act. It also is contrary to the plain language of the Act.

18 The Act recognizes that the public trust requires comprehensive regulation of gambling.
19 (Bus. & Prof. Code, § 19801, subd. (g).) The Act is intended to prevent unsuitable persons
20 from being permitted to associate with gambling activities. (Bus. & Prof. Code, § 19801, subd.
21 (k).)

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26 ⁷ Despite the clarity of the Commission's statements that licensing was stayed,
27 Respondent states that the Bureau "invented" that his license was stayed. (RCB, pp. 10-11.)
28 Moreover, contrary to Exhibit 2, Respondent asserts that "[t]here is not a shred of evidence in
the record that the Commission ever issued a stay of Mr. Swallow's license." (*Id.* at p. 11.)

1 The Commission is charged with assuring that licenses are not issued to unqualified or
2 disqualified persons.⁸ (Bus. & Prof. Code, § 19823, subd. (a)(1).) The Commission also is
3 charged with assuring that unqualified or disqualified persons have no material involvement
4 with a licensed gambling operation. (Bus. & Prof. Code, § 19823, subd. (a)(2).) These general
5 provisions directly contradict the compartmentalization advocated by Respondent.

6 Specific statutes further directly contradict Respondent's argument. Business and
7 Professions Code section 19866 provides for full and true disclosure "of all information . . . as
8 necessary to carry out the policies of this state relating to licensing, registration, and control of
9 gambling." Business and Professions Code section 19859, subdivision (b), refers to facts
10 material to qualification, or pertaining to the qualification criteria. Business and Professions
11 Code section 19857, subdivision (a), establishes good character, honesty, and integrity as
12 criteria for licensure. Business and Professions Code section 19857, subdivision (b), looks to
13 prior activities and associations that, among other things, pose a threat to effective regulation of
14 controlled gambling. Clearly, none of these provisions limits the disclosure duty, or suitability
15 criteria, to be "in relation to the particular license for which the applicant is applying" as argued
16 by Respondent.

17 For the above reasons and consistent with the Act, Respondent's untruthful and
18 misleading responses and failure to provide requested information and documents in connection
19 with his Hollywood Park Casino application properly can, and should, be considered in
20 determining his suitability for licensure.

21 **C. Respondent Was Not Denied Due Process**

22 Respondent argues that he was denied due process. For the most part, his argument
23 relates to matters unrelated to the pleadings and the hearing in this case. He submits his
24 argument without presenting any evidence that he was denied an opportunity to present his

25 ⁸ Business and Professions Code section 19823, subdivision (b), provides, in part:

26 "[U]nqualified person" means a person who is found to be
27 unqualified pursuant to the criteria set forth in Section 19857, and
28 "disqualified person" means a person who is found to be
 disqualified pursuant to the criteria set forth in Section 19859.

1 defense, or that Complainant had some untoward advantage. Instead, without elaboration,
2 Respondent asserts that “this prosecution . . . [is] an impermissible prosecution with an ulterior
3 motive.”⁹ The Judge should reject his arguments.

4 This proceeding focused on Respondent receiving prohibited payments, failing to
5 provide documents and information requested by the Bureau, and providing untrue or
6 misleading information to the Bureau and other regulators. The facts proving these bases for
7 disqualification from licensure arose before the Accusation was filed in May 2014. This
8 proceeding also focused on Respondent being unqualified for licensure.

9 During the course of the proceeding, Complainant produced more than 146,000 pages of
10 documents, as well as recordings of witness interviews. In response to Respondent’s subpoena,
11 the Commission produced more than 5,000 pages of documents. Respondent also subpoenaed,
12 and received, documents from witnesses identified by Complainant.¹⁰ Respondent presented
13 nearly 200 exhibits. Many of those exhibits were identified the night before the hearing
14 commenced or during the hearing.

15 Specifically and despite his access to tens of thousands of document pages and the time
16 period of his acts and omissions, Respondent now asserts that an interview of Bryan Roberts,
17 conducted approximately 30 days before the hearing, somehow denied him due process.
18 Respondent falsely asserts that the Bureau paid for Mr. Robert’s testimony.¹¹ Respondent
19 received a recording of the interview, as well as a copy of Mr. Roberts’s declaration. Even

20 ⁹ This assertion is in keeping with Respondent’s *ad hominem* attacks on those who do
21 not believe his untruths and misleading statements, or conclude that he should not be involved
22 in highly regulated gambling. Moreover, this is an administrative law proceeding, not a
“prosecution,” and Respondent never identifies, nor could he identify, an “ulterior motive.”

23 ¹⁰ The subpoenaed documents included communications with the Bureau concerning the
witness’s testimony at the hearing.

24 ¹¹ The evidence is: Mr. Roberts called Mr. Lunardi to get things off his chest (III RT pp.
25 132:5-133:4); Mr. Lunardi negotiated payment of monies due from Garden City to Mr. Roberts
26 (III RT pp. 134:23-135:6); Mr. Roberts stated that he was appearing voluntarily at the interview
27 (II RT pp. 176:12-177:20; IV RT 71:21-25); Mr. Roberts in effect said that he wanted to set the
28 record straight (IV RT 72:9-11); Mr. Roberts’s declaration accurately reported what he said
during the interview (II RT pp. 177:21-178:1; IV RT p. 69:6-11). Contrary to Respondent’s
assertion (RCB, p. 34), no evidence exists that Mr. Roberts’s testimony was coerced, and,
importantly, Respondent made no effort to obtain Mr. Roberts’s testimony.

1 though he was disclosed in Complainant's prehearing conference statement and in previous
2 discovery responses, Respondent's attorneys made no effort to bring Mr. Roberts before the
3 Judge, or to depose him.¹²

4 Respondent also asserts that matters unrelated to the pleadings, the hearing, and the
5 evidence denied him due process.¹³ Those matters have no bearing on the Judge's potential
6 recommendation to the Commission, and should not distract the Judge from the issues – i.e.,
7 Respondent's suitability for licensing. And, importantly, Respondent was not denied due
8 process. Instead, he had tens of thousands of document pages at his disposal, interview
9 recordings, time to prepare for the hearing, and the opportunity to be heard at the hearing.

10 **D. Because of the Broad Criteria for Qualification and the Policies Underlying the**
11 **Act, Materiality Here Can Be Determined as a Matter of Law**

12 Respondent argues that materiality of information – i.e., whether a reasonable regulator
13 would want to know the truth in making a suitability determination – is a question of fact and
14 that no evidence was presented.¹⁴ (RCB, pp. 22-24.) Respondent, however, does not dispute

15 ¹² Mr. Roberts is located in Texas. Government Code section 11511 provides for any
16 party to petition to depose a witness who is unable or cannot be compelled to attend a hearing.

17 ¹³ The matters unrelated to the pleadings, the hearing, and the evidence have no merit.
18 Respondent argues that the Bureau and the Commission are withholding monies owed to him,
19 but he did not pursue any statutory remedies available to him. (See, e.g., Bus. & Prof. Code, §
20 19931, subs. (c) & (d).)

21 Respondent also argues that the Bureau and the Commission have engaged in
22 impermissible ex parte communications concerning the merits of the Accusation. The evidence
23 to which Respondent refers shows neither impermissible ex parte communications nor
24 communications concerning the merits of the Accusation. (Bus. & Prof. Code, § 19872, subd.
25 (c); see also Cal. Code Regs., tit. 4, § 12012, subd. (a); Gov. Code, §§ 11430.20, subd. (b)
26 [procedural or practice matters that are not in controversy] & 11430.30, subd. (b) [settlement
27 proposals].)

28 Finally, Respondent argues that the Bureau did not comply with Business and
Professions Code section 19868, subdivision (b), requiring a pre-denial meeting. The facts are
that Respondent was served with the Accusation, the Bureau's recommendation of denial was
based on the Accusation that was already filed and served, and Respondent's attorney attended
a meeting – albeit after the recommendation was made – at the Bureau. Until his closing brief,
neither Respondent nor his attorney complained about the timing of the meeting.

¹⁴ Respondent is incorrect that no evidence of materiality was presented. Richard Teng
testified about the importance to regulation, and to him as a regulator, of full and true
disclosure. (II RT p. 136:3-10.) Stacey Luna Baxter also testified about the importance to

(continued...)

1 whether the untrue and omitted facts were material to qualification. (*Ibid.*) Most likely, that is
2 because materiality can be determined as a matter of law if reasonable minds cannot disagree.
3 (*Imperial Casualty & Indemnity Co. v Sogomanian* (1988) 198 Cal.App.3d 169, 179;
4 *Cummings v. Farmers Ins. Exchange* (1988) 202 Cal.App.3d 1407, 1417.) Unquestionably, the
5 untrue and misleading information was material.

6 Business and Professions Code section 19857 establishes broad criteria for qualification.
7 They include good character, honesty, and integrity.¹⁵ (Bus. & Prof. Code, § 19857, subd. (a).)
8 The qualification criteria also require prior activities, reputation, habits, and associations that do
9 not pose a threat to the state's public interest or to the effective regulation and control of
10 controlled gambling. (Bus. & Prof. Code, § 19857, subd. (b).) The qualification criteria further
11 require activities, reputation, habits, and associations that do not create or enhance the dangers
12 of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled
13 gambling or in the carrying on of the business and financial arrangements incidental thereto.
14 (*Ibid.*)

15 Consequently, information regarding compliance with law including the Act's
16 requirement for full and true disclosure, business and other relationships, business methods and
17 practices, and payments or distributions to others clearly are material to qualification. Any
18 reasonable regulator would want to know such facts before making a suitability determination.
19 Moreover, information relating to character, honesty, and integrity is material to qualification.
20 Likewise, any reasonable regulator would want to know such information before making a
21 suitability determination.

22 Finally, materiality to qualification must be read in the context of the Act's requirement
23 for full and true disclosure. That requirement encompasses all information "as necessary to
24 carry out the policies of this state relating to licensing, registration, and control of gambling."

25 _____
26 (...continued)
regulation, and to her as a regulator, of full and true disclosure. (V RT p. 26:3-15.)

27 ¹⁵ Thus, irrespective of materiality, the mere providing untrue or misleading information
28 relates to, and is probative of, a person's lack of good character, honesty, and integrity.

1 (Bus. & Prof. Code, § 19866.) The State’s policies include, among others: ensuring gambling
2 is free from criminal and corruptive elements (Bus. & Prof. Code, § 19801, subd. (g)); ensuring
3 that unsuitable persons are not permitted to associate with gambling activities or gambling
4 establishments (Bus. & Prof. Code, § 19801, subd. (k)); ensuring that no ineligible, unqualified,
5 disqualified, or unsuitable persons are associated with controlled gambling activities (Bus. &
6 Prof. Code, § 19824, subd. (d)); and requiring licensure of every person who receives, directly
7 or indirectly, any compensation, or any percentage or share of the money played, for carrying
8 on any controlled game (Bus. & Prof. Code, § 19850; see also Pen. Code, § 337j, subd. (a)(2)).
9 Each of these policies guides the Commission and the Bureau. Thus, each is material to
10 qualification.

11 **E. Respondent’s State Gambling License Is Subject to Mandatory Revocation;**
12 **Renewal Is Subject to Mandatory Denial**

13 Respondent asserts repeatedly that his license is not subject to mandatory revocation,
14 and that his application is not subject to mandatory denial. This is contrary to the Act’s plain
15 language. (Bus. & Prof. Code, § 19859 [“shall deny”].) This is contrary to the plain language
16 of the Commission’s regulations. (Cal. Code Regs., tit. 4, § 12568, subd. (c) [“shall be subject
17 to revocation”].

18 First, Business and Professions Code 19859 provides for mandatory denial: “The
19 commission shall deny a license to any applicant who is disqualified [for listed reasons].”
20 Those reasons are failing to establish eligibility and qualification (Bus. & Prof. Code, § 19859,
21 subd. (a)), failing to provide documents or information requested by the Chief¹⁶ (Bus. & Prof.
22 Code, § 19859, subd. (b)), failing to reveal a fact material to qualification (*ibid.*), or supplying
23 information that is untrue or misleading as to a material fact pertaining to qualification (*ibid.*).
24 The consequences of such acts and omission cannot be any clearer, or any less mandatory.

25 Second, California Code of Regulations, title 4, section 12568, subdivision (c)(4),
26 provides for mandatory revocation of any state gambling license if the holder “meets any of the

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28 ¹⁶ (See fn. 4, *supra.*)

1 criteria for *mandatory denial of an application* set forth in Business and Professions Code
2 section . . . 19859” (Italics added.) As is clear from the regulation, section 19859
3 establishes criteria for mandatory denial. Additionally, California Code of Regulations, title 4,
4 section 12568, subdivision (c)(2), provides for mandatory revocation of any state gambling
5 license if its holder “no longer meets any criterion of eligibility, [or] qualification . . . ,
6 including those set forth in Business and Professions Code section 19857” As is clear
7 from the regulation, the failure to meet section 19857’s criteria requires revocation.

8 Respondent argues that the regulation’s “shall be subject to revocation” language does
9 not mean what it says, and is not mandatory. That argument fails because of the regulation’s
10 clarity. Moreover, that argument fails because the Commission makes revocation the only
11 discipline available under regulation section 12568, subdivision (c). Appendix A, entitled
12 “Summary Chart of Disciplinary Guidelines,” follows the Commission’s regulations. That
13 chart sets forth minimum and maximum penalties under the regulations. For “Non-
14 Qualification, Gambling License, Finding of Suitability, Approval,” the Commission lists
15 revocation *as both the minimum and maximum penalty*, and refers to regulation section 12568,
16 subdivisions (c)(1), (3), (4). The chart contains no other reference to those subdivisions.

17 For the foregoing reasons, the Judge should reject Respondent’s argument that his state
18 gambling license is not subject to mandatory revocation, and its renewal is not subject to
19 mandatory denial. Clearly, the Act and the Commission’s regulations mandate revocation and
20 denial under the evidence presented here.

21 **RESPONDENT’S PORTRAYAL OF HIS CONDUCT SHOULD BE REJECTED**

22 Despite overwhelming evidence to the contrary, Respondent focuses on certain facts to
23 portray his conduct as compliant with his statutory duties. In the context of the overall facts,
24 Respondent’s portrayal is incorrect, and the Judge should reject it.

25 Respondent argues that he was not untruthful to, and did not mislead, the Commission
26 and the Bureau about the existence of an accountant’s written valuation opinion on February 21,
27 2013. (RCB, pp. 29-31.) Clearly, Respondent stated that he had a written valuation opinion
28 when he did not. (CCB, pp. 16-17.) He now portrays his representation as referring to audited

1 financial statements.¹⁷ That portrayal is contradicted by what was said and by how the
2 Commission responded. The Commission conditioned Respondent's temporary license for
3 Hollywood Park Casino as follows:

4 Within 5 business days of this approval, Eric Swallow shall
5 provide the Bureau of Gambling Control, a copy of . . . any and all
6 analysis conducted by any CPA, including the valuation of the
7 commodities and services provided as it relates to the [related
8 party] Agreements.

8 (Exh. AD, pp. AD-5 to AD-6.) Clearly, if financial statements were the subject of
9 Respondent's representations to the Commission and, later, the Bureau, this condition would
10 have been unnecessary or worded quite differently.

11 Respondent argues that no competent evidence supports that he, through an agent, falsely
12 represented to the Bureau that certain income from Secure Stone related to Mrs. Swallow's sale
13 of her dental practice. (RCB, pp. 33-34.) The evidence clearly supports that basis for discipline
14 or denial. (CCB, pp. 20-22.) No dispute exists that David Carrillo, a Bureau auditor, was a
15 public employee, who while acting in the performance of his official duties, reported certain
16 information regarding facts provided to him. The evidence is admissible.¹⁸ (See Evid. Code, §
17 1280.) Additionally, Respondent's attorneys incorrectly stated that Mr. Roberts, who was
18 Secure Stone's agent, was providing software development services for Mrs. Swallow.¹⁹ (Exh.
19 10, p. 10-2.) Moreover, Respondent testified that Secure Stone was one of his companies and
20 one of his affiliated companies. In sum, irrespective of Respondent's hearsay objection, other
21 evidence was admitted that supports discipline.

22 ¹⁷ Respondent also asserts that Garden City's financial statements contained "a written
23 statement by Mr. Bellotti expressing his opinion regarding the propriety of these [related party]
24 payments." (RCB, p. 31.) That statement is patently untrue. The audited financial statements
25 merely disclose the fact, not the propriety, of the related party payments. (Exh. 12, p. 12-14;
26 Exh. 13, p. 13-14; Exh. 14, p. 14-12; Exh. 15, pp. 15-13 to 15-14; AW, pp. AW-14 to AW-15.)

25 ¹⁸ Obviously, the information regarding Secure Stone and the sale of Mrs. Swallow's
26 dental practice is not offered for its truth. It, therefore, is not hearsay.

27 ¹⁹ On direct examination, Respondent went through Mr. Roberts's declaration paragraph
28 by paragraph and identified the information with which Respondent disagreed. Respondent did
not disagree with Mr. Roberts's statement that he never worked with Deborah Swallow.

1 Respondent argues that the evidence shows Dolchee provided gaming analytical software
2 to Garden City.²⁰ (RCB, pp. 37-41.) The evidence overwhelmingly establishes that the gaming
3 analytical software did not exist. (CCB, pp. 27-30.) First, Respondent relies on his testimony,
4 which is inherently unreliable.²¹ The evidence is overwhelming that despite his testimony that
5 he never supplied untrue information to the Bureau (I RT pp. 56:6-57:22.), he repeatedly
6 provided untruthful and misleading information to the Bureau and other regulators.
7 Additionally, Respondent asserts that the purported gaming analytical software was
8 copyrighted. (RCB, p. 39.) This is misleading because Respondent's testimony was that he did
9 not send any paperwork to the United States Patent and Trademark Office, and that the
10 purported software was subject to "a common law copyright." (II RT p. 115:4-22.)
11 Respondent's assertions are further belied by Mr. Bellotti's March 19, 2013 letter to the Bureau
12 (Exh. EX) and every audited financial statement that he certified for 2009 through 2013. In
13 sum, no credible evidence exists that Dolchee provided gaming analytical software to Garden
14 City.

15 Respondent asserts that the evidence shows Dolchee was owned by Respondent and the
16 Lunardi Trust and that monies paid to Dolchee were not distributions.²² (RCB, pp. 21-22.) The
17 evidence is overwhelming that this assertion is incorrect. The Swallow Trust was a Dolchee
18 member; the monies paid were distributions. (CCB, p. 24.) Because he cannot point to a single
19 document among the thousands of document pages produced and taken into evidence in this
20

21 _____
22 ²⁰ Respondent's argument relies on, among other things, the GT Report (RCB, pp. 38,
42), which he does not contest as being as false and misleading.

23 ²¹ Respondent also relies on a March 13, 2013 memorandum that he provided to the
24 Bureau. (RCB, pp. 37-38; see Exh. GX.) There, he referred to the "Dolchee Royalty
25 agreement" that was never produced in this case. If he was referring to the Licensing
Agreement, it does not mention software at all. (See Exh. 7, p. 7-460.)

26 ²² Respondent asserts that any reference to Penal Code section 337j is new matter not
27 encompassed within the First Amended Accusation and Statement of Issues. (RCB, pp. 48-49;
28 see also *id.* at p. 54.) The First Amended Accusation and Statement of Issues, however, alleged
that Respondent aided, facilitated, or benefited from monies paid indirectly to unlicensed
persons. (First Amended Accusation and Statement of Issues, p. 24, ¶ 48(e).)

1 case,²³ Respondent relies on his and Mr. Bellotti's testimony for his assertion. Respondent's
2 testimony is inherently unbelievable.

3 Mr. Bellotti's testimony fares no better. It is contrary to actions he took and, therefore,
4 unbelievable. Whenever he provided documents to government agencies, Mr. Bellotti did not
5 provide anything remotely resembling the purported agreement about which he testified. In
6 August 2014, he produced only an agreement signed by the Swallow Trust in response to the
7 Bureau's subpoena. (VI RT 72:18-21.) Also in 2014, he provided the Internal Revenue Service
8 only with an agreement signed by the Swallow Trust. (VI RT 73:6-11.)

9 Respecting "distributions" to Dolchee, Mr. Bellotti presented technical definitions or
10 explanations. The simple answer, as demonstrated by the evidence, is that Dolchee received
11 \$38.5 million from Garden City (see CCB, p. 24) for licensed card games for which it charged
12 others \$1,200 per month (*id.* at p. 33). The fees paid by Garden City to Dolchee were more
13 than 50 times greater than those charged by other table game providers. (See *ibid.*) Whether
14 those millions of dollars met Mr. Bellotti's technical definition of "distribution" is beside the
15 point. Clearly, Dolchee was the vehicle used to get extremely large sums of money out of
16 Garden City, and drive its net income down. Mr. Lunardi's testimony made this abundantly
17 clear.

18 Respondent also asserts that the payments received by Secure Stone from Team View
19 Associates were not prohibited by Business and Professions Code section 19984, subdivision
20 (a). (RCB, pp. 19-20.) The evidence is overwhelming that Secure Stone received nearly \$3.6
21 million from Team View Associates. (CCB, pp. 11-13.) This arrangement was neither reported
22 nor included in a contract approved by the Bureau. (Cal. Code Regs., tit. 4, § 12200.7, subd.
23 (b)(15) [requiring full disclosure of any financial arrangement for any purpose between the
24 house and any registrant].) The evidence also shows that Team View Players paid more than
25 \$2.1 million to Team View Associates between May 2012 and July 2013. (Exh. 25, p. 25-3

26 ²³ Respondent points to a report prepared by Mr. Conroy to support his assertion. Mr.
27 Conroy testified that he relied upon information provided by Respondent and Mr. Lunardi. (IV
28 TR pp. 49:21-50:15.) No document produced by the City of San Jose contains the amended
agreement about which Respondent testified.

1 [response no. 7].) Finally, the evidence shows that the value of any software provided by
2 Secure Stone was far below what was charged. (See III RT p. 125:20-25.) Only one conclusion
3 makes sense: Respondent through the Secure Stone-Team View Associates agreement had an
4 indirect interest in the funds wagered, lost, or won by Team View Player Services.

5 **RESPONDENT DID NOTHING TO MITIGATE THE VIOLATIONS**

6 Respondent argues that factors in mitigation far outweigh factors in aggravation. (RCB,
7 pp. 49-51.) At the hearing, he offered nothing in mitigation. Now Respondent offers as
8 mitigation his pending sale of his Garden City stock for \$50 million. He clearly did not
9 cooperate with the Bureau's investigation. Instead, he provided untrue and misleading
10 information, and failed to provide information and documents requested by the Bureau. He also
11 misled the Bureau about his involvement in Secure Stone. Clearly, his conduct threatened the
12 integrity of the regulatory process.²⁴ In sum, but for this administrative proceeding and the
13 Bureau's emergency order, Respondent would be continuing to take millions of dollars from
14 Garden City, through an unlicensed entity, and sharing those monies with unlicensed persons.
15 In sum, Respondent did nothing to mitigate his unsuitable conduct.

16 **A FINE IN THE RANGE REQUESTED SHOULD BE RECOMMENDED**

17 Here, Respondent has received, and stands to walk away with, tens of millions of dollars.
18 The Lunardis, the Lunardi Trust, and Garden City settled the case, made Garden City's
19 operations more transparent and compliant, and cooperated in the case's preparation and
20 presentation. Combined, they paid \$1.5 million as a fine. Any fine under the range requested –
21 \$4,659,000 to \$18,815,000 – sends the message to gambling licensees that settlement,
22 transparency, compliance, and cooperation are not encouraged. Rather, licensees may engage
23 in unlawful acts, walk away with tens of millions of dollars, and incur insignificant fines.

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26 ²⁴ Respondent argues that at the Commission's May 29, 2014 meeting, the Bureau's
27 attorney stated that neither patrons nor employees at Garden City were threatened by
28 Respondent's conduct. (RCB, p. 50.) That statement needs to be read in context. The issue
presented was whether the Bureau should have issued an emergency order shutting down
Garden City. (Exh. BA1, p. BA-10.)

1 The violations here are clearly evidenced. The Act requires full and true disclosure.
2 (Bus. & Prof. Code, § 19866.) Respondent breached that duty. He violated that provision each
3 day that he did not make full and true disclosure. That is not a continuing violation; it is a
4 repeated violation. Unlike *People v. Superior Court* (1973) 9 Cal.3d 283, 288-289, which
5 Respondent cites, this is not the case of a single scheme defrauding multiple victims.
6 Respondent had an affirmative duty under the Act to make full and true disclosure, and he
7 repeatedly did not.

8 Additionally, multiple payments were made to Dolchee and Secure Stone. To reduce
9 those multiple payments to merely two violations would encourage, and reward, licensees who
10 make payments to unlicensed persons and entities. The statutory maximum fine of \$20,000 is
11 miniscule compared with the monies received by Dolchee (\$38.5 million) and Secure Stone
12 (\$3.6 million). It becomes a small price to pay to conduct illegal business, particularly when
13 the illegal activities and violations are reduced as Respondent advocates.

14 **CONCLUSION AND REQUESTED RECOMMENDATIONS**

15 For the reasons set forth above and in the closing brief, Complainant respectfully
16 requests that the Judge recommend the following to the Commission:

- 17 1. Respondent's state gambling license number GEOW-001330 be revoked;
 - 18 2. Respondent's application to renew state license number GEOW-01330 be
19 denied;
 - 20 3. A fine in the range of \$4,659,000 to \$18,815,000 be imposed; and
 - 21 4. Complainant be reimbursed costs of investigating the matter and prosecuting this
22 proceeding in the amount of \$127,880, as set forth in Appendix A.
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Dated: October 9, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General



WILLIAM P. TORNGREN
Deputy Attorney General
Attorneys for Complainant Wayne J. Quint, Jr.

APPENDIX A
SUPPLEMENTAL DECLARATION OF
WILLIAM P. TORNGREN

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Attorneys for the Complainant
8

9
10 **BEFORE THE**
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**
12 **STATE OF CALIFORNIA**

13
14 **In the Matter of the Accusation and**
15 **Statement of Issues Against:**

16 **GARDEN CITY, INC., doing business as**
CASINO M8TRIX (GEGE-000410);

17 **ERIC G. SWALLOW (GEOW-001330);**

18 **PETER V. LUNARDI III (GEOW-001331);**

19 **JEANINE LYNN LUNARDI (GEOW-**
20 **003119); and**

21 **THE LUNARDI FAMILY LIVING**
22 **TRUST, dated August 27, 2008 (GEOW-**
003259).

23 **1887 Matrix Boulevard**
San Jose, CA 95110

24 **Respondents.**
25

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

SUPPLEMENTAL DECLARATION OF
WILLIAM P. TORNGREN

(Cal. Code Regs., tit. 1, § 1042)

1 I, William P. Torngren, declare:

2 1. I am a Deputy Attorney General in the California Department of Justice
3 (Department), office of the Attorney General, and assigned to the Public Rights Division, Indian
4 and Gaming Law Section, in Sacramento, California. I am an attorney at law admitted to
5 practice in all California state and federal courts. I have been lead counsel for Complainant in
6 this matter since its filing. If called and sworn, I could testify to the following from my
7 personal knowledge, and from records maintained by the Department.

8 2. This declaration is submitted pursuant to California Code of Regulations, title 1,
9 section 1042, in support of Complainant's request for the Department's reasonable costs of
10 investigation and prosecution of the case. The Department requests those costs pursuant to
11 Business and Professions Code section 19930, subdivision (c). This declaration supplements
12 my declaration that was previously filed on September 11, 2015 (First Declaration).

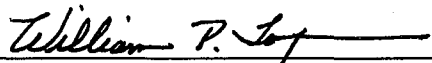
13 3. In the First Declaration, I reported the costs of prosecuting this case between
14 May 14, 2015, and August 31, 2015, to be \$108,160. They related directly to prosecuting this
15 case against Respondent Eric G. Swallow (Respondent). The costs represented 521 hours of
16 attorney time at \$170 per hour and 163.25 hours of paralegal time at \$120 per hour.

17 4. I have reviewed the time records maintained by the Department relating to this
18 case from September 1, 2015, to October 9, 2015. For that time period, the costs of prosecuting
19 this case total \$19,720. These costs represent 116 hours of attorney time at \$170 per hour. The
20 hours were spent as follows: reviewing, analyzing, and summarizing the reporter's transcript,
21 exhibits admitted at the hearing, and other documents and pleadings; planning for, strategizing,
22 preparing, and supervisory review of Complainant's Closing Brief; reviewing and analyzing
23 Respondent's closing brief; reviewing evidence; planning for, strategizing, preparing, and
24 supervisory review of Complainant's Reply Brief.

25 5. When the \$19,720 set forth above is added to the \$108,160 reported in the First
26 Declaration, the total costs incurred for prosecution of this case from May 14, 2015, to October
27 9, 2015, is \$127,880.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 9, 2015, at Sacramento, California.



William P. Torngren

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8
9 **BEFORE THE**
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11 **STATE OF CALIFORNIA**

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23 **003259).**

24 **1887 Matrix Boulevard**
25 **San Jose, CA 95110.**

26 **Respondents.**

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

PROOF OF SERVICE BY MAIL AND
E-MAIL

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I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On October 9, 2015, I served the attached **COMPLAINANT'S REPLY BRIEF** by transmitting a true copy via electronic mail

AND

On October 9, 2015, I served the attached **COMPLAINANT'S REPLY BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

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*Attorneys for Respondent Garden City, Inc., dba
M8trix*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 9, 2015, at Sacramento, California.

LINDA THORPE
Declarant



Signature