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8 Attorneys for Plaintiff  
9 GARDEN CITY, INC. dba CASINO M8TRIX

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

GARDEN CITY, INC., doing business as  
CASINO M8TRIX, a California corporation,

Plaintiff,

vs.

ERIC SWALLOW, an individual; and DOES 1  
through 10, Inclusive,

Defendants.

Case No:

16 CV 295297

**COMPLAINT FOR BREACH OF  
FIDUCIARY DUTY, INDEMNITY, TORT  
OF ANOTHER, FRAUD AND  
DECLARATORY RELIEF**

Plaintiff, GARDEN CITY, INC., doing business as CASINO M8TRIX ("GCI"), alleges  
as follows:

1. GCI is a California corporation who at all times relevant herein has been doing  
business in the City of San Jose, County of Santa Clara, at 1887 Matrix Boulevard, San  
Jose, California ("Casino Premises"). GCI operates a California licensed card room at the  
Casino Premises

2. Defendant ERIC SWALLOW is, and at all times relevant herein, was an  
individual person residing in either the State of Nevada, or the County of Los Angeles. From  
2007 to the present, Mr. Swallow has been a director of GCI; he also served continuously  
as secretary of the entity from 2007 until January 2016, having agreed to perform those  
roles and the acts and responsibilities required for the benefit of GCI. In addition, Mr.

ENDORSED  
FILED

2016 MAY 17 P 3:01

David H. Yarnall, Clerk of the Superior Court  
County of Santa Clara, California

By: \_\_\_\_\_ Deputy Clerk

S. Smith

1 Swallow is the holder of 12,500 shares in GCI, which equals fifty percent (50%) of the  
2 outstanding shares.

3 3. The true names and capacities, whether individual, corporate, associate, or  
4 otherwise of Defendants DOES 1 through 10, inclusive, are unknown to Plaintiff who  
5 therefore sues said Defendants by such fictitious names and prays leave to amend this  
6 Complaint to allege the true names and capacities of such Defendants when ascertained.  
7 Plaintiff is informed and believes and thereon alleges that each of the DOE Defendants are,  
8 in some manner, responsible for the acts hereinafter alleged.

9 4. Plaintiff is informed and believes and thereon alleges that, at all times relevant  
10 hereto, each Defendant was the agent, servant, partner or employee of each of the  
11 remaining Defendants and that each Defendant acted within the scope and course of such  
12 agency, service, employment or partnership with the express and/or implied knowledge,  
13 permission and consent of the remaining Defendants.

14 5. As a shareholder, officer and director of a licensed card room, Mr. Swallow was  
15 required to hold a gaming license issued by the State of California, as well as a license  
16 issued by the City of San Jose. Mr. Swallow first obtained such licenses in 2007. Venue is  
17 proper in this county as the acts and omissions alleged herein occurred in the City of San  
18 Jose, County of Santa Clara, the location of the corporate headquarters of GCI, the location  
19 of the books and records and the location at which the damage inflicted by Mr. Swallow's  
20 misdeeds occurred.

21 6. In or about May 31, 2014, the Bureau of Gambling Control, an arm of the  
22 California Department of Justice, issued an "Accusation" against Mr. Swallow, GCI, and the  
23 remaining shareholders of GCI. A true and correct copy of the Accusation is attached  
24 hereto as Exhibit "1" and incorporated herein. The Accusation alleges, *inter alia*, the  
25 commission of a variety of acts by Mr. Swallow that are antithetical to the privilege of holding  
26 a gaming license in the State of California. Amongst other relief, the Accusation prays for  
27 the revocation of Mr. Swallow's license, which would prevent him from continuing to own  
28 shares in GCI as a licensed California card room. Peter V. and Jeanine Lunardi as Trustees



1 of the Lunardi Family Trust, owned the remaining fifty percent (50%) shares in GCI at the  
2 time that the Accusation was filed. Mr. and Mrs. Lunardi as Trustees of their Trust are  
3 hereinafter referred to as the "Lunardis." The GCI board of directors has three members,  
4 consisting of the Lunardis and Mr. Swallow.

5 7. GCI, the Lunardis and Mr. Swallow all retained counsel in response to the  
6 Accusation, in order to defend their licensure. Attorney's fees incurred by each of these  
7 parties in response to the Accusation were initially covered either by GCI's insurance, or  
8 paid by GCI. Since the Lunardis and Mr. Swallow occupied the only three (3) seats on the  
9 Board of Directors of GCI at the time of the Accusation, there were no disinterested directors  
10 available to vote on the issue of whether or not the Lunardis and Mr. Swallow should be  
11 indemnified by the corporation, or whether their attorney's fees should be advanced by the  
12 corporation. A portion of the attorneys' fees incurred by Mr. Swallow have been paid by  
13 insurance, but there are additional fees in the hundreds of thousands of dollars that he has  
14 requested be paid by GCI.

15 8. GCI and the Lunardis were able to settle with the Department of Justice, thereby  
16 resolving the Accusation. The settlement included payment of a fine, and the compliance  
17 with certain regulatory requirements mandated by the Department of Justice. A true and  
18 correct copy of the settlement is attached hereto as Exhibit "2" and incorporated herein by  
19 this reference.

20 9. Mr. Swallow was unable to reach a settlement with the Department of Justice  
21 and the Accusation proceeded to trial against him in August of 2015. The trial took place  
22 after multiple requests and stipulations to continuances by Mr. Swallow, who otherwise had  
23 a statutory right to a prompt hearing. Prior to trial, the Lunardis had learned from  
24 independent third party witnesses and through documents produced, that Mr. Swallow had  
25 received kickbacks from multiple vendors of GCI, including but not limited to the vendor  
26 providing third party proposition player services at the Casino Premises. These kickbacks  
27 were in the millions of dollars over a period of years, and in particular, the kickbacks from  
28 the third party proposition player exposed GCI to potential loss of licensure, as such

1 payments are in direct violation of the California Gambling Control Act. The Lunardis were  
2 likewise exposed to loss of licensure, in part for the failure to discover the kickbacks that  
3 were being paid to Mr. Swallow.

4 10. Again, as part of discovery related to the Accusation, the Lunardis learned for  
5 the first time in the summer of 2015, that Mr. Swallow had instructed current and former  
6 employees of GCI, to alter and falsify company records, to assist Mr. Swallow in his defense  
7 of the Accusation. These actions included Mr. Swallow instructing a current GCI employee  
8 working at the Casino Premises to allow a former vendor to access the computer network  
9 at GCI, in order to alter digital records intending to then use such records to mislead the  
10 ultimate trier of fact in the trial of the Accusation. GCI is informed and believes and on that  
11 basis alleges that the instructions to allow access to the GCI server in order to falsify records  
12 and evidence, were given by Mr. Swallow in or about February of 2015. GCI is further  
13 informed and believes and thereupon alleges that the falsified evidence created as a result  
14 of those actions, was presented by Mr. Swallow to the administrative law judge hearing the  
15 trial of the Accusation in or about August of 2015.

16 11. The falsified evidence was intended by Mr. Swallow to be used to buttress his  
17 claim that a company by the name of Secure Stone LLC, a Nevada limited liability company,  
18 had provided software products to certain vendors of GCI, and that monies paid by GCI  
19 vendors to Secure Stone were paid in exchange for those software products. GCI is  
20 informed and believes and on that basis alleges that Secure Stone in fact sold no custom  
21 software products to anyone, including GCI vendors, and that the company was merely a  
22 sham designed to receive kickbacks demanded by Mr. Swallow. In order to further conceal  
23 his misdeeds, Mr. Swallow set up Secure Stone as a company purportedly owned solely by  
24 his now estranged wife, Debra Swallow.

25 12. The Accusation, as amended, proceeded to administrative hearing in August  
26 2015. The Administrative Law Judge rendered her proposed decision on December 14,  
27 2015; a true and correct copy is attached hereto as Exhibit "3" (the "Decision"). The  
28 Decision holds, *inter alia*, that Mr. Swallow set up Secure Stone LLC, that he is the owner



1 of Secure Stone LLC, and that Secure Stone LLC received funds from Team View Players  
2 (funneled through Team View Associates) in at least the amount of \$3.6 million and perhaps  
3 more (the "Team View Kickback"). As set forth in the Decision, the Team View Kickback  
4 was paid to Mr. Swallow, through Secure Stone LLC, in violation of California law.

5  
6 **FIRST CAUSE OF ACTION  
FOR BREACH OF FIDUCIARY DUTY  
(AGAINST ERIC SWALLOW)**

7 13. Plaintiff incorporates herein all of the allegations set forth in Paragraphs 1  
8 through 12, above, as though fully set forth.

9 14. As an officer and director of GCI and beginning in 2007 and continuing to at  
10 least January 2016, Mr. Swallow owed and continues to owe a fiduciary duty to GCI and its  
11 other shareholders, and Mr. Swallow agreed to perform all duties and obligations required  
12 by his corporate roles. This fiduciary duty includes the obligation to act with the utmost  
13 good faith with respect to the corporation and all of its assets; specifically, Mr. Swallow was  
14 precluded from obtaining personal profits from his activities as an officer/director and is  
15 required to account to GCI if he does so. By the actions and inactions taken by Mr. Swallow  
16 as set forth in the Accusation, Mr. Swallow breached his fiduciary obligations to GCI,  
17 including but not limited to use of his corporate office for personal enrichment by demanding  
18 and receiving the Team View Kickback. Mr. Swallow further breached his fiduciary duties  
19 to GCI by instructing current and former employees to assist in doctoring the corporate  
20 records of the company for purposes of concealing wrongdoing by Mr. Swallow. The  
21 bringing of this action was authorized and approved by the remaining directors of GCI, the  
22 Lunardis.

23 15. GCI is informed and believes and on that basis alleges that Mr. Swallow  
24 encouraged employees of GCI to assist him in his multiple breaches of fiduciary duty,  
25 including by altering corporate records; failing to disclose agreements between M8trix  
26 vendors and Swallow, and failing to disclose agreements between M8trix vendors and  
27 casino general manager Scott Hayden, all to avoid discovery of Swallow's breaches of  
28 fiduciary duty to GCI.

1 16. As a direct and proximate result of the multiple breaches of fiduciary duty by  
2 Mr. Swallow, GCI has been injured in an amount to be proven at trial but in excess of Three  
3 Million Six Hundred Thousand Dollars (\$3,600,000.00).

4 17. The actions of Mr. Swallow in breach of his fiduciary duties were intentional,  
5 deliberate, malicious, willful, fraudulent and committed with intentional disregard for the  
6 consequences to GCI and therefore should be punished by the award of exemplary  
7 damages against Mr. Swallow.

8 WHEREFORE, Plaintiff prays Judgment as hereinafter set forth.

9  
10 **SECOND CAUSE OF ACTION**  
**FOR INDEMNITY AND REIMBURSEMENT**  
**(AGAINST ERIC SWALLOW)**

11 18. Plaintiff incorporates herein by reference the allegations contained in Paragraph  
12 1 through 17, above, as though fully set forth.

13 19. As a direct and proximate result of the actions and inactions alleged in the  
14 Accusation against Mr. Swallow, and his multiple breaches of fiduciary duty as detailed  
15 above, GCI was forced to and did incur legal fees in defense of the Accusation, and to  
16 indemnify the Lunardis for legal fees incurred in their own defense. But for the wrongful  
17 acts of Mr. Swallow as alleged above, GCI would not have incurred those legal fees, which  
18 total in excess of One Million Dollars (\$1,000,000.00). In addition, GCI has advanced on  
19 Mr. Swallow's behalf attorney's fees in excess of the amount covered by directors and  
20 officers insurance for GCI, in an amount according to proof.

21 20. GCI is entitled to recover the sums advanced in payment of attorney's fees on  
22 behalf of Mr. Swallow in defense of the Accusation, pursuant to California Corporations  
23 Code Section 310.

24 WHEREFORE, Plaintiff prays Judgment as hereinafter set forth.

25 **THIRD CAUSE OF ACTION**  
**FOR TORT OF ANOTHER**  
26 **(AGAINST ERIC SWALLOW)**

27 21. Plaintiff incorporates herein by reference Paragraphs 1 through 17 above, as if  
28 fully set forth.



1        22. As a direct, proximate result of the breaches of fiduciary duty alleges above,  
2 GCI was forced to appear and defend itself in litigation, namely the defense of the  
3 Accusation and incurred attorneys' fees and damages as a result. GCI is entitled to recover  
4 those attorneys' fees, costs and damages, which were incurred as a direct result of Mr.  
5 Swallow's tortious conduct.

6        WHEREFORE, Plaintiff prays judgment as hereinafter set forth.

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8                                **FOURTH CAUSE OF ACTION**  
9                                **FOR FRAUD**  
                              (AGAINST ERIC SWALLOW)

10        23. Plaintiff incorporates herein by reference Paragraphs 1 through 17 above, as if  
11 fully set forth.

12        24. Mr. Swallow was not the only person at GCI who demanded and received  
13 improper kickbacks from vendors. Plaintiff is informed and believes and on that basis  
14 alleges that the former casino general manager, Scott Hayden, likewise received kickbacks  
15 from vendors at the Casino Premises. Plaintiff is further informed and believes and on that  
16 basis alleges that Mr. Swallow was aware of these kickbacks, was aware that vendors were  
17 being preyed upon by himself and other management, and failed to disclose such activities  
18 to GCI.

19        25. As an officer and director of GCI, Mr. Swallow had a duty to disclose the facts  
20 he was aware of regarding the payment of kickbacks by vendors of GCI to persons involved  
21 in operations as such kickbacks were unlawful and economically damaging to GCI. These  
22 facts were highly material to GCI.

23        26. As a direct, proximate result of Mr. Swallow's failure of disclosure, GCI suffered  
24 damage in an amount to be proven at trial, but in excess of \$75,000.00.

25        27. The actions of Mr. Swallow as alleged herein were intentional, deliberate,  
26 malicious, willful, fraudulent and committed with intentional disregard for the consequences  
27 to GCI and therefore should be punished by the award of exemplary damages against Mr.  
28 Swallow.

1 WHEREFORE, Plaintiff prays judgment as hereinafter set forth.

2  
3 **FIFTH CAUSE OF ACTION**  
4 **FOR DECLARATORY RELIEF**  
5 **(AGAINST ERIC SWALLOW)**

6 28. Plaintiff incorporates herein by reference Paragraphs 1 through 17 above, as if  
7 fully set forth.

8 29. The By-Laws of GCI provide for the company to indemnify its officers and  
9 directors against expenses, judgments, fines, settlements and other amounts actually and  
10 reasonably incurred in connection with any proceeding arising out of their service to the  
11 company and grants the authority to advance defense costs. Mr. Swallow contends that  
12 GCI has an ongoing obligation to advance funds for his defense costs relating to the  
13 Accusation; GCI disagrees, particularly in light of the facts uncovered during discovery and  
14 the proposed decision of the administrative law judge. An actual controversy exists relating  
15 to the parties rights and responsibilities for payment of the defense costs incurred by Mr.  
16 Swallow in that ongoing matter, which requires a judicial declaration.

17 WHEREFORE, Plaintiff prays judgment as follows:

18 **PRAYER**

- 19 1. For monetary damages according to proof but in excess of four million five  
20 hundred thousand dollars (\$4,500,000);  
21 2. For punitive damages;  
22 3. For a judicial declaration that GCI is not required to indemnify or pay ongoing  
23 costs of defense incurred by Mr. Swallow in defending the Accusation; and  
24 4. For such other and further as the Court determines to be just and proper.

25 Dated: May 17, 2016

26 GREENFIELD DRAA & HARRINGTON LLP

27 By: 

28 MAUREEN A. HARRINGTON  
Attorneys for Plaintiff  
GARDEN CITY, INC. dba  
CASINO M8TRIX



## **EXHIBIT 1**

1 KAMALA D. HARRIS  
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*Attorneys for the Complainant*

8  
9 **BEFORE THE**  
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**  
11 **STATE OF CALIFORNIA**  
12

13  
14 **In the Matter of the Accusation Against:**

15 **GARDEN CITY, INC., doing business as**  
16 **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-**  
23 **003259).**

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

26 **Respondents.**  
27  
28

**BGC Case No. HQ2014-00001AL**

**OAH No.**

**ACCUSATION**



1 Complainant alleges as follows:

2 **PARTIES**

3 1. Wayne J. Quint, Jr. (Complainant) brings this Accusation solely in his official  
4 capacity as the Chief of the California Department of Justice, Bureau of Gambling Control  
5 (Bureau).

6 2. At all times relevant herein, Respondent Garden City, Inc. (Garden City) was a  
7 licensed gambling enterprise, California State Gambling License Number GEGE-000410. That  
8 license will expire on May 31, 2014, unless extended. Garden City does business as Casino  
9 M8trix at 1887 Matrix Boulevard in San Jose, California. It is a 49-table card room.

10 3. Respondent Eric G. Swallow (Swallow), license number GEOW-001330, is a  
11 shareholder of Garden City and endorsed on its license. Respondent Peter V. Lunardi III (Peter  
12 Lunardi), license number GEOW-001331, was a shareholder of Garden City, is a trustee of  
13 Respondent Lunardi Family Living Trust, dated August 27, 2008 (Lunardi Trust), and is  
14 endorsed on Garden City's license. Respondent Jeanine Lynn Lunardi (Jeanine Lunardi),  
15 license number GEOW-003119, also was a shareholder of Garden City, is a trustee of the  
16 Lunardi Trust, and is endorsed on Garden City's license. The Lunardis are husband and wife.  
17 On August 12, 2010, the California Gambling Control Commission (Commission) approved the  
18 transfer of the Lunardis' shares, and issued license number GEOW-003259, to the Lunardi  
19 Trust, which then was endorsed on Garden City's license. Swallow and the Lunardi Trust each  
20 own 50 percent of Garden City's stock and constitute all of its shareholders. Their licenses will  
21 expire on May 31, 2014, unless extended.

22 4. Collectively, Garden City, Swallow, Peter Lunardi, Jeanine Lunardi, and the Lunardi  
23 Trust are referred to as "Respondents" in this Accusation.

24 **STATEMENT OF THE CASE**

25 5. This case seeks to discipline Respondents' licenses – by revocation, suspension,  
26 and/or fine as appropriate – for persistent and repeated violations of, and lack of suitability for  
27 continued licensing under, the Gambling Control Act (Act) and the regulations adopted  
28 pursuant to the Act. As alleged in this Accusation, Respondents provided untrue and

1 misleading information to the Bureau and others, failed to provide information requested by the  
2 Bureau, engaged in self-dealing to siphon off monies for themselves and reduce reported net  
3 income, and benefited from payments prohibited by the Act. The acts and omissions alleged in  
4 this Accusation are inimical to the public health, safety, and welfare; those acts and omissions  
5 demonstrate that Respondents are not persons of good character, honesty, and integrity. Their  
6 acts and omissions, as alleged in this Accusation, pose a threat to the effective regulation and  
7 control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or  
8 illegal practices, methods, and activities in carrying on the business and financial arrangements  
9 incidental to the conduct of controlled gambling. Respondents' acts and omissions not only  
10 impeded the Bureau's investigation and fact gathering, but also effectively reduced potential  
11 payments to charities located in the City of San Jose. Respondents are not suitable or qualified  
12 for continued licensure; therefore, each of their licenses should be disciplined.

### 13 FACTUAL BACKGROUND

14 6. Respondents operate, and operated in the past, through a maze of affiliated entities.  
15 Money flows between those entities without documentation or relationship to the value of  
16 services provided. This is Respondents' standard practice. In response to the Bureau's request  
17 for invoices relative to payments involving millions of dollars annually, Swallow responded:

18 There are no invoices. It has been agreed upon by ownership as  
19 standard practice to estimate the annual payment for the year per the  
20 agreement and then make monthly payments based on available cash  
flow to give the Casino [Garden City] operational flexibility.

21 In addition, Respondents' agent has written:

22 Whether the money came from companies owned by the individual  
23 applicants or the individual applicants makes no difference as they  
ultimately are the same individuals.

24 Exhibit A, which is attached and incorporated by reference, illustrates the maze of affiliated  
25 entities and transactions. It also sets forth the flow of funds, as well as certain entities and  
26 persons affiliated with or employed by Respondents.



1       7. Garden City has been licensed as a card room in the City of San Jose since  
2 approximately 1976. In 1998, it filed for bankruptcy protection. In 2005, Swallow, Peter  
3 Lunardi, and Jeanine Lundardi, along with Dina DiMartino, entered into a stock purchase  
4 agreement to acquire Garden City's stock from the bankruptcy trustee under a proposed  
5 reorganization plan. On January 5, 2006, the Commission approved the stock purchase  
6 agreement. On March 22, 2007, Ms. DiMartino withdrew her state gambling license  
7 application. Swallow, Peter Lunardi, and Jeanine Lunardi purchased all issued and outstanding  
8 stock in Garden City in 2007. The Commission first endorsed Swallow, Peter Lundardi, and  
9 Jeanine Lunardi on Garden City's license on March 1, 2007. In August 2010, Peter Lunardi  
10 and Jeanine Lunardi transferred their shares to the Lunardi Trust.

11       8. On May 25, 2007, Dolchee LLC (Dolchee) was formed as a California limited  
12 liability company. At all times since formation, its only members have been Swallow and Peter  
13 Lunardi. In 2007 and 2008, Dolchee filed for trademarks on "Baccarat Gold." Dolchee has no  
14 other trademarks registered in its name with the United States Patent and Trademark Office. On  
15 December 31, 2008, Dolchee was converted out of California to be a Nevada limited liability  
16 company. By an undated License Agreement made as of January 1, 2009, Dolchee agreed to  
17 provide certain denominated games to Garden City for a monthly minimum payment of  
18 \$400,000, or \$4.8 million annually. The agreement does not contain any provision for  
19 determining any amount above the minimum. Between January 1, 2009, and December 31,  
20 2012, Garden City's payments to Dolchee totaled \$38,482,000; during that time period, Garden  
21 City always paid more than the minimum annually. Swallow advised the Bureau that no  
22 invoices or similar documents exist with respect to the payments exceeding the minimum.

23       9. On July 21, 2008, Profitable Casino LLC (Profitable Casino) was formed as a  
24 California limited liability company. Its sole member is Swallow. On December 31, 2008,  
25 Profitable Casino was converted out of California to be a Nevada limited liability company. By  
26 an undated Application Service Provider Agreement made as of January 1, 2009, Profitable  
27 Casino agreed to provide access to certain computer applications to Garden City for a monthly  
28 minimum consulting fee of \$400,000, or \$4.8 million annually. Profitable Casino was to

1 invoice Garden City for any fees exceeding the minimum. Between January 1, 2009, and  
2 December 31, 2012, Garden City's payments to Profitable Casino totaled \$14,050,000.  
3 Swallow advised the Bureau that no invoices or similar documents exist with respect to the  
4 payments.

5 10. On December 31, 2008, Potere LLC (Potere) was formed as a Nevada limited  
6 liability company. Its sole member is Peter Lunardi. By an undated Vendor Contractor  
7 Agreement made as of January 1, 2009, Potere agreed to provide general business consulting to  
8 Garden City for a monthly minimum consulting fee of \$400,000, or \$4.8 million annually.  
9 Potere was to invoice on a monthly basis for all hours worked and to provide services on  
10 Garden City's premises during regular business hours. Between January 1, 2009, and  
11 December 31, 2012, Garden City's payments to Potere totaled \$14,050,000, which was equal to  
12 the payments made to Profitable Casino. Swallow advised the Bureau that no invoices or  
13 similar documents exist with respect to the payments.

14 11. On or about March 8, 2009, Garden City reached a tentative settlement with the City  
15 of San Jose. Under the settlement's terms, Garden City agreed to pay to a selected charity  
16 \$500,000 annually until June 30, 2011. Thereafter, the annual payment to the selected charity  
17 would be the greater of \$125,000 or 5.15 percent of Garden City's net income before interest,  
18 taxes, depreciation, and amortization (EBITDA). City of San Jose officials understood that  
19 5.15 percent of Garden City's EBITDA would be approximately \$250,000.

20 12. Garden City accounted for its payments to Dolchee, Profitable Casino, and Potere as  
21 expenses, and not as dividends or distributions to its owners. As a consequence of expensing  
22 those payments, Garden City's net income ranged between approximately minus 0.31 percent  
23 and 1.42 percent of its gross gaming revenues between January 1, 2009, and December 31,  
24 2012. For three of those four years, Garden City's net income was essentially zero. Other card  
25 rooms in California of similar size as Garden City reported net income that averaged  
26 approximately 10 percent of gross gaming revenues over the same period.

27 13. On April 1, 2009, Dolchee entered into a licensing agreement for Baccarat Gold with  
28 an California tribal casino. The monthly payment under that licensing agreement is \$1,200 per



1 table per month. On June 1, 2009, Dolchee entered into a licensing agreement for Baccarat  
2 Gold with a card room other than Garden City. The monthly payment under that licensing  
3 agreement is \$1,200 per table per month for a minimum of two tables. On November 17, 2009  
4 – 11 months after the effective date of the License Agreement described above in paragraph 8 –  
5 a patent for Baccarat Gold was issued to Scott Hayden, who is Garden City's general manager.  
6 Mr. Hayden subsequently assigned the patent to Dolchee for no payment.

7 14. On November 25, 2009, Airport Parkway Two LLC (Airport Parkway) was formed  
8 as a California limited liability company. Its sole member is Airport Opportunity Fund LLC  
9 (Airport Fund), which was formed as a Delaware limited liability company on December 3,  
10 2009. Airport Fund's members are the Lunardi Trust and the Eric Swallow and Deborah  
11 Swallow Family Trust, dated August 31, 2004 (Swallow Trust), the trustees of which are  
12 Swallow and his wife Deborah. Each trust owns a 50-percent interest in Airport Fund. Neither  
13 the Swallow Trust nor Deborah Swallow has, or has applied for, a state gambling license.

14 15. On January 20, 2010, Airport Parkway closed an \$8 million real estate purchase.  
15 Airport Parkway used approximately \$2 million provided by Dolchee, Profitable Casino, and  
16 Potere as a down payment and financed the \$6 million balance with a commercial lender.  
17 Subsequently, on March 22, 2011, an additional financing with that same commercial lender  
18 closed. The real property was improved with a new eight-story building to house gambling,  
19 entertainment, restaurant, meeting, office, and other facilities. The property's address was  
20 changed to 1887 Matrix Boulevard.

21 16. As part of Respondents' plan to open a new casino at 1887 Matrix Boulevard, Casino  
22 M8trix, Inc. was formed as a Nevada corporation. Its shareholders were Swallow and the  
23 Lunardi Trust. Less than a month after its formation, Casino M8trix, Inc. entered into a lease  
24 with Airport Parkway to lease 1887 Matrix Boulevard in its entirety for an annual rent of  
25 \$7,209,572, which equals \$70.68 per square foot. As part of the March 22, 2011 additional  
26 financing, Casino M8trix, Inc. gave a security interest in all of its property to the commercial  
27 lender. On September 6, 2011, Casino M8trix, Inc. submitted an initial application for a state  
28 gambling license to the Commission. The Bureau initiated an investigation in connection with

1 that application. In April 2012, after learning that the City of San Jose viewed transferring a  
2 city gambling license from one entity to another would result in the license's termination,  
3 Airport Parkway and Garden City entered into a lease for 1887 Matrix Boulevard that was  
4 backdated to January 1, 2011. That lease was substantively identical to what Casino M8tix, Inc.  
5 previously executed.

6 17. On January 21, 2010, Team View Player Services, LLC (Team View Player Services)  
7 was formed as a California limited liability company. Its sole member is Timothy M. Gustin.  
8 On February 22, 2010, Secure Stone, LLC (Secure Stone) was formed as a Delaware limited  
9 liability company. Its sole member is Deborah Swallow. Its address is the same as Airport  
10 Fund's. On May 1, 2010, pursuant to an agreement dated March 30, 2010, and signed by Peter  
11 Lunardi and Mr. Gustin, Team View Player Services agreed to provide third-party proposition  
12 player services at Garden City. On the same date, Team View Player Services entered into a  
13 contract with Team View Player Associates, LLC (Team View Associates), which was owned  
14 solely by Mr. Gustin and which, in turn, entered into an agreement with Secure Stone.

15 18. In November 2010, Team View Associates entered into a contract with Optimum  
16 Solutions Consulting, Inc., a Wyoming corporation owned solely by Scott Hayden, who is  
17 Garden City's general manager and a key employee. Team View Associates entered into other  
18 agreements with entities owned by Mr. Hayden or his family members. Pursuant to those  
19 agreements, Team View Associates has paid more than \$850,000 since November 2010.  
20 Complainant presently is investigating Mr. Hayden with respect to those payments, as well as  
21 other conduct.

22 19. On June 6, 2012, LAX Property, LLC (LAX) was formed as a Delaware limited  
23 liability company. Its sole member was Swallow. Its address was the same as Secure Stone's  
24 and Airport Fund's. Thereafter LAX entered into a series of agreements with Hollywood Park  
25 Casino Company, Inc. (Hollywood Park). The agreements' essence was for LAX to lease and  
26 operate Hollywood Park's casino and card room in Inglewood, California. Towards  
27 accomplishing that, LAX and Swallow applied to the Commission for gambling licenses. The  
28 Bureau initiated an investigation in connection with those applications.

20. On August 7, 2012, Garden City, doing business as Casino M8trix, opened a new casino at 1887 Matrix Boulevard. Garden City's casino operations and offices occupy less than half the floors of 1887 Matrix Boulevard. The remaining space is empty, but is subject to the lease described above.

21. On February 21, 2013, and April 18, 2013, Swallow and his agents appeared at the Commission's regularly scheduled meetings. They made statements intended to influence the Commissioners' decisions in connection with LAX's proposed transactions with Hollywood Park and LAX's and Swallow's license applications. The Commission issued temporary licenses to Swallow and LAX to operate Hollywood Park's casino and card room. On September 12, 2013, Hollywood Park gave written notice that LAX was in default under its lease. On December 12, 2013, the Commission approved a transition agreement providing for LAX's removal as Hollywood Park casino's operator.

## JURISDICTION

22. Business and Professions Code section 19811 provides, in part:

(b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

23. Business and Professions Code section 19823 provides:

(a) The responsibilities of the commission include, without limitation, all of the following:

(1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(b) For the purposes of this section, “unqualified person” means a person who is found to be unqualified pursuant to the criteria set forth in



1 Section 19857, and "disqualified person" means a person who is found to  
2 be disqualified pursuant to the criteria set forth in Section 19859.

3 24. Business and Professions Code section 19824 provides, in part:

4 The commission shall have all powers necessary and proper to enable  
5 it fully and effectually to carry out the policies and purposes of this  
chapter, including, without limitation, the power to do all of the following:

6 \* \* \*

7 (b) For any cause deemed reasonable by the commission, . . . limit,  
8 condition, or restrict any license, permit, or approval, or impose any fine  
9 upon any person licensed or approved. The commission may condition,  
10 restrict, discipline, or take action against the license of an individual owner  
endorsed on the license certificate of the gambling enterprise whether or  
not the commission takes action against the license of the gambling  
enterprise.

11 \* \* \*

12 (d) Take actions deemed to be reasonable to ensure that no ineligible,  
13 unqualified, disqualified, or unsuitable persons are associated with  
controlled gambling activities.

14 25. Business and Professions Code section 19826 provides, in part:

15 The department<sup>[1]</sup> . . . shall have all of the following responsibilities:

16 \* \* \*

17 (c) To investigate suspected violations of this chapter or laws of this  
18 state relating to gambling . . .

19 \* \* \*

20 (e) To initiate, where appropriate, disciplinary actions as provided in  
21 this chapter. In connection with any disciplinary action, the department  
22 may seek restriction, limitation, suspension, or revocation of any license or  
approval, or the imposition of any fine upon any person licensed or  
approved.

23 26. California Code of Regulations, title 4, section 12554 provides, in part:

24 (a) Upon the filing with the Commission of an accusation by the  
25 Bureau recommending revocation, suspension, or other discipline of a  
26 holder of a license, registration, permit, finding of suitability, or approval,

27 <sup>1</sup> "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.  
28 (h).)

1 the Commission shall proceed under Chapter 5 (commencing with section  
2 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

3 \* \* \*

4 (d) Upon a finding of a violation of the Act, any regulations adopted  
5 pursuant thereto, any law related to gambling or gambling establishments,  
6 violation of a previously imposed disciplinary or license condition, or laws  
7 whose violation is materially related to suitability for a license,  
8 registration, permit, or approval, the Commission may do any one or more  
9 of the following:

10 (1) Revoke the license, registration, permit, finding of suitability,  
11 or approval;

12 (2) Suspend the license, registration, or permit;

13 \* \* \*

14 (5) Impose any fine or monetary penalty consistent with  
15 Business and Professions Code sections 19930, subdivision (c), and  
16 19943, subdivision (b)

#### 17 COST RECOVERY

18 27. Business and Professions Code section 19930 provides, in part:

19 (b) If, after any investigation, the department is satisfied that a license,  
20 permit, finding of suitability, or approval should be suspended or revoked, it  
21 shall file an accusation with the commission in accordance with Chapter 5  
22 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the  
23 Government Code.

24 \* \* \*

25 (d) In any case in which the administrative law judge recommends that  
26 the commission revoke, suspend, or deny a license, the administrative law  
27 judge may, upon presentation of suitable proof, order the licensee or  
28 applicant for a license to pay the department the reasonable costs of the  
investigation and prosecution of the case.

(1) The costs assessed pursuant to this subdivision shall be fixed  
by the administrative law judge and may not be increased by the  
commission. When the commission does not adopt a proposed decision  
and remands the case to the administrative law judge, the administrative  
law judge may not increase the amount of any costs assessed in the  
proposed decision.

1 (2) The department may enforce the order for payment in the  
2 superior court in the county in which the administrative hearing was  
3 held. The right of enforcement shall be in addition to any other rights  
4 that the division may have as to any licensee to pay costs.

5 (3) In any judicial action for the recovery of costs, proof of the  
6 commission's decision shall be conclusive proof of the validity of the  
7 order of payment and the terms for payment.

8 \* \* \*

9 (f) For purposes of this section, "costs" include costs incurred for any  
10 of the following:

11 (1) The investigation of the case by the department.

12 (2) The preparation and prosecution of the case by the Office of  
13 the Attorney General.

#### 14 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

15 28. Business and Professions Code section 19850 provides, in part:

16 Every person . . . who receives, directly or indirectly, any  
17 compensation or reward, or any percentage or share of the money or  
18 property played, for keeping, running, or carrying on any controlled  
19 game in this state, shall apply for and obtain from the commission, and  
20 shall thereafter maintain, a valid state gambling license, key employee  
21 license, or work permit . . . In any criminal prosecution for violation of  
22 this section, the punishment shall be as provided in Section 337j of the  
23 Penal Code.

24 29. Business and Professions Code section 19855 provides, in part:

25 [E]very person who, by statute or regulation, is required to hold a state  
26 license shall obtain the license prior to engaging in the activity or  
27 occupying the position with respect to which the license is required.

28 30. Business and Professions Code section 19857 provides:

No gambling license shall be issued unless, based on all the  
information and documents submitted, the commission is satisfied that  
the applicant is all of the following:

(a) A person of good character, honesty and integrity.

(b) A person whose prior activities, criminal record, if any,  
reputation, habits, and associations do not pose a threat to the public  
interest of this state, or to the effective regulation and control of  
controlled gambling, or create or enhance the dangers of unsuitable,  
unfair, or illegal practices, methods, and activities in the conduct of



1 controlled gambling or in the carrying on of the business and financial  
2 arrangements incidental thereto.

3 (c) A person that is in all other respects qualified to be licensed as  
4 provided in this chapter.

5 31. Business and Professions Code section 19859 provides, in part:

6 The commission shall deny a license to any applicant who is  
7 disqualified for any of the following reasons:

8 (a) Failure of the applicant to clearly establish eligibility and  
9 qualification in accordance with this chapter.

10 (b) Failure of the applicant to provide information,  
11 documentation, and assurances required by the Chief, or failure of  
12 the applicant to reveal any fact material to qualification, or the  
13 supplying of information that is untrue or misleading as to a material  
14 fact pertaining to the qualification criteria.

15 32. Business and Professions Code section 19866 provides:

16 An applicant for licensing or for any approval or consent required  
17 by this chapter, shall make full and true disclosure of all information  
18 to the department and the commission as necessary to carry out the  
19 policies of this state relating to licensing, registration, and control of  
20 gambling.

21 33. Business and Professions Code section 19920 provides:

22 It is the policy of the State of California to require that all  
23 establishments wherein controlled gambling is conducted in this state  
24 be operated in a manner suitable to protect the public health, safety,  
25 and general welfare of the residents of the state. The responsibility for  
26 the employment and maintenance of suitable methods of operation  
27 rests with the owner licensee, and willful or persistent use or toleration  
28 of methods of operation deemed unsuitable by the commission or by  
local government shall constitute grounds for license revocation or  
other disciplinary action.

34. Business and Professions Code section 19922 provides:

No owner licensee shall operate a gambling enterprise in violation  
of any provision of this chapter or any regulation adopted pursuant to  
this chapter.

35. Business and Professions Code section 19923 provides:

No owner licensee shall operate a gambling enterprise in violation  
of any governing local ordinance.

36. Business and Professions Code section 19984, subdivision (a) provides:

1 Notwithstanding any other provision of law, a licensed gambling  
2 enterprise may contract with a third party for the purpose of providing  
3 proposition player services at a gambling establishment, subject to the  
4 following conditions:

5 (a) Any agreement, contract, or arrangement between a gambling  
6 enterprise and a third-party provider of proposition player services  
7 shall be approved in advance by the department, and in no event shall  
8 a gambling enterprise or the house have any interest, whether direct or  
9 indirect, in funds wagered, lost, or won.

10 37. California Code of Regulations, title 11, section 2070, subdivisions (a) and (b)  
11 provide:

12 It shall be an unsuitable method of operation for a gambling  
13 establishment to:

14 (a) Offer for play any game that is prohibited or made unlawful  
15 by statute, local ordinance, regulation or final judgment by a  
16 competent court of law; [and]

17 (b) Offer for play any gaming activity which is not authorized by  
18 the Bureau pursuant to the [Gambling Control] Act and these  
19 regulations for play at that gambling establishment[.]

20 38. San Jose Municipal Code, title 16, section 16.18.010, subdivision B provides:

21 It shall be illegal for a Cardroom Permittee, Owner, or Employee  
22 to permit, allow, or suffer the playing of any Controlled Game except  
23 Permissible Games.

24 39. San Jose Municipal Code, title 16, section 16.18.040, subdivision B, provides:

25 B. No Game shall be played at any permitted Cardroom unless:

26 1. It is listed as a Permissible Game or a substitution is authorized  
27 by the Administrator pursuant to this Chapter, and

28 2. It is a Controlled Game pursuant to State Gambling Law.

40. San Jose Municipal Code, title 16, section 16.32.080 provides:

An Applicant for licensing and every Licensee shall make full and  
true disclosure of all information the Administrator requires in order to  
carry out the requirements and policies of this Title.

1 **FIRST CAUSE FOR DISCIPLINE**  
2 **AGAINST RESPONDENT SWALLOW'S LICENSE**

3 **(Prohibited Interests in the Funds Wagered, Lost, or Won by a Third-Party Provider)**

4 41. Swallow's license is subject to discipline, pursuant to Business and Professions  
5 Code sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b).  
6 Swallow's continued licensure is inimical to public health, safety, and welfare. Swallow is not  
7 a person of good character, honesty, and integrity. His prior activities pose a threat to the  
8 effective regulation and control of controlled gambling, and create or enhance the dangers of  
9 unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and  
10 financial arrangements incidental to the conduct of controlled gambling. Swallow had an  
11 indirect interest in funds wagered, lost, or won by Team View Player Services, which provided  
12 third-party proposition player services to Garden City. Specifically, Secure Stone, a Delaware  
13 limited liability company the sole member of which is Swallow's wife, received payments  
14 totaling approximately \$3.6 million from Team View Associates, the sole member of which is  
15 Mr. Gustin, who is Team View Player Services's sole member. Those payments were made in  
16 2010, 2011, and 2012. Business and Professions Code section 19984, subdivision (a) prohibits  
17 the receipt of such payments.

18 **SECOND CAUSE FOR DISCIPLINE**  
19 **AGAINST RESPONDENT GARDEN CITY'S LICENSE**

20 **(Prohibited Interests in the Funds Wagered, Lost, or Won by a Third-Party Provider)**

21 42. Garden City's license is subject to discipline, pursuant to Business and Professions  
22 Code sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b).  
23 Garden City's continued licensure is inimical to public health, safety, and welfare. Its prior  
24 activities pose a threat to the effective regulation and control of controlled gambling, and create  
25 or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in  
26 carrying on the business and financial arrangements incidental to the conduct of controlled  
27 gambling. Garden City had a direct or indirect interest in funds wagered, lost, or won by Team  
28 View Player Services. Specifically, Garden City's third-party provider contract provided for



1 Team View Player Services to pay \$2,226,000 annually. Of that amount, 50 percent, or  
2 \$1,113,000, purportedly was paid for parking, a designated area on the casino floor, and use of  
3 casino area for meetings with employees. In fact, Team View Player Services's employees  
4 were not allowed to park on the Casino M8trix property, and Team View Player Services  
5 increased their compensation to offset the costs of parking offsite. Moreover, Team View  
6 Player Services did, and does, not use the casino area for employee meetings. Team View  
7 Player Services's designated area on the premises is 400 square feet. In sum, Garden City  
8 receives more than \$1.1 million annually for renting 400 square feet; that fee is substantially  
9 disproportionate to the facilities provided. Business and Professions Code section 19984,  
10 subdivision (a) prohibits the receipt of such payments.

11 **THIRD CAUSE FOR DISCIPLINE**  
12 **AGAINST ALL RESPONDENTS' LICENSES**

13 **(Prohibited Interests in the Funds Wagered, Lost, or Won by a Third-Party Provider)**

14 43. Respondents' licenses are subject to discipline, pursuant to Business and Professions  
15 Code sections 19823, 19857, subdivisions (a) and (b), 19859, subdivisions (a) and (b), and  
16 19920. Each Respondent's continued licensure is inimical to public health, safety, and welfare.  
17 Respondents' prior activities pose a threat to the effective regulation and control of controlled  
18 gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods,  
19 and activities in carrying on the business and financial arrangements incidental to the conduct of  
20 controlled gambling. Respondents knew of, should have known of, were willfully ignorant of,  
21 allowed to occur, assisted, abetted and/or tolerated other Respondents having direct or indirect  
22 interests in funds wagered, lost, or won by Team View Player Services as alleged above. In  
23 violation of Business and Professions Code section 19920, each Respondent failed to fulfill his,  
24 her, or its responsibility to employ and maintain suitable methods of operation by willfully and  
25 persistently tolerating methods of operation that allowed receipt of payments prohibited by  
26 Business and Professions Code section 19984, subdivision (a).

**FOURTH CAUSE FOR DISCIPLINE  
AGAINST RESPONDENT SWALLOW'S LICENSE  
(Providing False or Misleading Information to the Bureau)**

44. Swallow's license is subject to discipline, pursuant to Business and Professions Code sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b).

Swallow's continued licensure is inimical to public health, safety, and welfare. Swallow is not a person of good character, honesty, and integrity and his prior activities pose a threat to the effective regulation and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and financial arrangements incidental to the conduct of controlled gambling. Swallow, or his agents, supplied untrue or misleading information as to material facts pertaining to his qualification criteria. Specifically, the false or misleading information included, among other things and without limitation, the following:

(a) Swallow represented that a written accountant's opinion existed regarding the pricing for certain dealings between Garden City and entities affiliated with or controlled by Swallow. In response to the Bureau's repeated requests, Swallow made misleading statements as to the opinion's existence. No written opinion has been provided.

(b) In a license application signed on July 6, 2012, Swallow represented that he was separated from his wife, Deborah Swallow. In July and August 2013, when responding to the Bureau's inquiries, his agents repeated the representation that Swallow was separated from Deborah Swallow; in doing so, they gave differing separation dates. However, Swallow and Deborah Swallow were not separated. Instead, they moved from California to Nevada, lived there in the same house, returned to California, and lived together in the same residence. On October 9, 2013, Deborah Swallow filed for dissolution of their marriage in Los Angeles County Superior Court. In the dissolution matter, both she and Swallow have declared under penalty of perjury that their date of separation was October 8, 2013.

1 (c) Swallow's agent represented to the Bureau that payments exceeding \$1.4 million  
2 received by Deborah Swallow in 2010 from Secure Stone related to the sale of her dental  
3 practice. Those payments did not relate to the sale of her dental practice; the payments  
4 came indirectly from Team View Player Services in violation of Business and Professions  
5 Code section 19984, subdivision (a).

6 (d) By letter dated July 10, 2013, Swallow's agent represented that Deborah Swallow  
7 had "no interest in Casino M8trix" and that her business affairs were independent of  
8 Swallow's. Her business affairs were not independent of his in all respects. For example,  
9 at the time of the representation, Deborah Swallow was a trustee of the Swallow Trust,  
10 which had a 50-percent membership interest in Airport Fund, which in turn was the only  
11 member of Airport Parkway, which owns 1887 Matrix Boulevard. Additionally, the  
12 Swallow Trust received at least \$3.2 million in indirect payments from Garden City  
13 through Dolchee. As a further example of the dependence of their business affairs, filings  
14 with the Nevada Secretary of State report that Deborah Swallow's personal property  
15 secures repayment of loans made to Casino M8trix, Inc. and Airport Parkway.

16 (e) Swallow represented that certain games and software licensed by his affiliates,  
17 Dolchee and Profitable Software, were confidential and proprietary, and had combined  
18 fair values exceeding \$90 million. The games and software were not treated as  
19 confidential and did not have the fair value represented by Swallow. The total cash  
20 investment in developing the games and software was approximately \$15,000. No money  
21 had been paid for the patent assignment for Baccarat Gold. That game was provided to  
22 other casinos for \$1,200 per table per month. In response to the Bureau's request,  
23 Swallow never provided any written confidentiality, nondisclosure, trade secret, or similar  
24 agreements between either Dolchee or Profitable Software, on the one hand, and any  
25 person who had participated in the development, programming, or maintenance of the  
26 games or software, on the other.

27 (f) Swallow represented that the payments made by Garden City to Profitable Casino  
28 were based upon the proprietary nature and competitive advantage derived from software



1 provided by Profitable Casino. All or a portion of the payments to Profitable Casino were  
2 dividends or distributions paid to Swallow. Nonetheless, they were expensed by Garden  
3 City. The payments to Profitable Casino were equal to payments made by Garden City to  
4 Potere. No justification or substantiation was required for the payments made to Potere.  
5 Those payments were based on Garden City's cash flow and net income; they in effect  
6 were dividends or distributions paid to Peter Lunardi that also were expensed by Garden  
7 City.

8 (g) Swallow caused a valuation of games and software owned by Dolchee and  
9 Profitable Casino to be prepared by Grant Thornton (GT Report) and submitted to the  
10 Bureau. The GT Report was false and misleading. Among other things, it represented  
11 that Garden City licensed a number of card games from Dolchee, including Baccarat  
12 Gold, Double Hand Poker Gold, Pai Gow Tiles Gold, Texas Hold'em Gold, and Omaha  
13 Gold (collectively, Dolchee Games) and that those games had unique rules, betting  
14 options, and visual layouts, which are variations of some well-known casino games. But  
15 only one of those games -- Baccarat Gold -- was patented or copyrighted. Garden City  
16 never has received approvals from the Bureau to play the Dolchee Games known as Pai  
17 Gow Tiles Gold, Texas Hold'em Gold, or Omaha Gold. Garden City never has received  
18 approvals from the City of San Jose to play any of the Dolchee Games other than Baccarat  
19 Gold. The versions of the Dolchee Games, other than Baccarat Gold, approved by the  
20 Bureau for play at Garden City did not have any unique rules or betting options.

21 (h) The GT Report represented that Garden City licensed Pai Gow Poker and  
22 Ultimate Texas Hold'em games from ShuffleMaster, a well-known provider of table  
23 games to California card rooms, and then turned those games over to Dolchee for  
24 rebranding. In preparing the valuation, Grant Thornton was acting as an agent of  
25 Swallow, who was the source of information that it used. The GT Report was false and  
26 misleading with respect to the so-called "rebranding" of ShuffleMaster games. In truth,  
27 ShuffleMaster's agreements provide that a "Customer shall not make any modification to  
28 the [game], nor shall it remove or reproduce the [game] . . . ." Under its ShuffleMaster

1 agreements, Garden City had no power to sublicense the games. In response to the  
2 Bureau's requests, Swallow failed to provide any documentation showing modification,  
3 rebranding, or sublicensing of games provided by ShuffleMaster or any other vendor.

4 (i) The GT Report represented that between January 1, 2010, and December 31,  
5 2012, Garden City made payments totaling \$9,050,000 each to Profitable Casino and  
6 Potere. However, during the Bureau's investigation, Swallow represented that for the  
7 same period, Garden City's payments totaled \$8,950,000 each to Profitable Casino and  
8 Potere.

9 (j) The GT Report represented that in 2010, Garden City made payments totaling  
10 approximately \$8.7 million to Dolchee. However, during the Bureau's investigation,  
11 Swallow represented that for the same period, Garden City's payments totaled  
12 approximately \$7.2 million to Dolchee.

13 (k) The GT Report represented that Dolchee provided gaming analytical software to  
14 Garden City. The GT Report concluded that the gaming analytical software's fair value  
15 was \$29.5 million. The GT Report was false and misleading with respect to the so-called  
16 "gaming analytical software." The agreement between Dolchee and Garden City granted  
17 a license to play the Dolchee Games. That agreement provided nothing for, and did not  
18 mention, gaming analytical software. In response to the Bureau's request that he "state  
19 the reasons for the payments and the amounts of any payments that were not made under  
20 the terms of the License Agreement," Swallow provided no reasons thus indicating that all  
21 payments from Garden City to Dolchee were under the agreement's terms. At the  
22 Commission's February 21, 2013 meeting, Swallow stated that Dolchee developed a  
23 baccarat game for use at Garden City, which had paid \$5 million for the right to use that  
24 game. Garden City's financial statements for 2009, 2010, 2011, and 2012 reported the  
25 payments to Dolchee as "licensed game fees." Dolchee's tax returns listed its principal  
26 business activity as "game patent holdings."

27 (l) In connection with his license application, Swallow provided the Bureau with  
28 attachments showing that Airport Parkway's loan balance on 1887 Matrix Boulevard was

1 \$2,869,702.50. In truth, Airport Parkway had entered into commercial loans exceeding  
2 \$23 million that were secured by, among other things, its real and personal property,  
3 including any leases for 1887 Matrix Boulevard, as well as all securities owned by  
4 Swallow, Peter Lunardi, and Jeanine Lunardi. Additionally, according to filings with the  
5 California Secretary of State, Garden City's personal property secured payment of at least  
6 one commercial loan provided to Airport Parkway.

7 **FIFTH CAUSE FOR DISCIPLINE**  
8 **AGAINST RESPONDENT SWALLOW'S LICENSE**

9 **(Failure To Provide Information and Documentation Requested by the Chief)**

10 45. Swallow's license is subject to discipline, pursuant to Business and Professions Code  
11 sections 19823, 19857, subdivisions (a) and (b), and 19859, subdivisions (a) and (b).  
12 Swallow's continued licensure is inimical to public health, safety, and welfare. Swallow is not  
13 a person of good character, honesty, and integrity and his prior activities pose a threat to the  
14 effective regulation and control of controlled gambling, and create or enhance the dangers of  
15 unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and  
16 financial arrangements incidental to the conduct of controlled gambling. Swallow, or his  
17 agents, failed to provide information and documents requested by the Bureau acting on the  
18 Complainant's behalf. Specifically, the information and documents requested, but not  
19 provided, included, among other things and without limitation, the following:

20 (a) The Bureau requested that Swallow state whether monies provided by his and  
21 Peter Lunardi's affiliates in connection with acquisition, construction, or improvement of  
22 1887 Matrix Boulevard were gifts, investments, or capital contributions. The amounts  
23 totaled more than \$2 million. Swallow failed to provide the requested information.

24 (b) The Bureau requested that Swallow provide copies of any security agreement and  
25 financing statement relating to any collateral that was personal property given for each  
26 loan made in connection with 1887 Matrix Boulevard's acquisition, construction, or  
27 improvement. Swallow failed to provide the requested documents.

1 (c) The Bureau asked Swallow whether any loans entered into in connection with  
2 1887 Matrix Boulevard's acquisition, construction, or improvement were collateralized  
3 with or secured by any assets or property held by Garden City. The Bureau requested  
4 that, if so, Swallow provide copies of all documents relating to the loans. Swallow failed  
5 to provide the requested information and documents.

6 (d) The Bureau requested that Swallow provide copies of certain documents relating  
7 to loans or indebtedness made or incurred by Casino M8trix, Inc. in connection with 1887  
8 Matrix Boulevard's acquisition, construction, or improvement that was secured or  
9 collateralized with personal property. Swallow provided some, but not all, documents.

10 (e) The Bureau asked Swallow to provide certain information with respect to games  
11 licensed to Garden City for play including, among other things, the name and GEGA  
12 number of each game. Swallow failed to provide all information.

13 (f) The Bureau asked Swallow to provide specific information with respect to each  
14 game licensed to Garden City by Dolchee. The requested information included the  
15 game's name, GEGA number and the date of approval for play, the date the game was  
16 first played, and patent information. Swallow failed to provide any of the requested  
17 information.

18 (g) The Bureau requested Swallow to provide copies of all documents relating to or  
19 evidencing monies that he or any of his affiliates paid to or received from certain entities.  
20 Swallow failed to provide any of the requested documents.

21 (h) The Bureau requested Swallow to provide information about, including  
22 agreements or invoices underlying, payments received by him or any of his affiliates or  
23 immediate family from any third-party provider of proposition player services or any  
24 person or entity affiliated with a third-party provider of proposition player services.  
25 Swallow failed to provide the requested information and documents.

26 (i) The Bureau requested Swallow to provide the written accountant's opinion that he  
27 had represented to the Commission existed. Despite multiple requests, Swallow did not  
28 provide the requested written opinion. Ultimately, Swallow advised that the written

1 opinion did not exist as previously represented and, in effect, confirmed that he had  
2 provided false or misleading information to both the Bureau and the Commission.

3 (j) The Bureau requested Swallow to provide an accountant's fair market  
4 determination of certain transactions with affiliates. The Bureau specifically requested a  
5 valuation based upon what a willing buyer or user would pay to a willing seller or vendor  
6 dealing at arms' length when neither was acting under compulsion to enter into the subject  
7 transactions. Swallow failed to provide the requested fair market valuation. Instead, as  
8 alleged in paragraph 44 above, he caused the GT Report, which is false and misleading, to  
9 be provided to the Bureau.

10 **SIXTH CAUSE FOR DISCIPLINE**  
11 **AGAINST RESPONDENT SWALLOW'S LICENSE**  
12 **(Unqualified for Licensure)**

13 46. Swallow's license is subject to discipline, pursuant to Business and Professions Code  
14 sections 19823 and 19857, subdivisions (a) and/or (b). Swallow's continued licensure is  
15 inimical to public health, safety, and welfare. Swallow is not a person of good character,  
16 honesty, and integrity and his prior activities pose a threat to the effective regulation and control  
17 of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal  
18 practices, methods, and activities in carrying on the business and financial arrangements  
19 incidental to the conduct of controlled gambling. In addition to the acts and omissions alleged  
20 above, Swallow's conduct in his affairs demonstrates that he is unqualified for licensure. That  
21 conduct includes, among other things and without limitation, the following:

22 (a) Swallow, directly or through his agents, repeatedly provided false or misleading  
23 information to the City of San Jose. This included, without limitation and as an example  
24 only, on September 23, 2010, at 9:06 a.m., Swallow sending an email to Deanna Santana,  
25 City of San Jose. He attached what he represented to be a "signed contract" and wrote:  
26 "Please note the significant amount of money we are spending." The attachment included  
27 "Appendix A Hardware Costs," which showed a total of \$358,615.71. Appendix A,  
28



1 however, had been altered by \$300,000 – i.e., from \$58,615.71 to \$358,615.71. Later, at  
2 11:20 a.m. on the same day, Swallow emailed instructions to one of Garden City’s agents  
3 to send the edited Appendix A to the City of San Jose.

4 (b) On May 7, 2012, during a residency audit conducted by the California Franchise  
5 Tax Board (FTB), Swallow represented that he was on the board of directors of Garden  
6 City but “not a working/licensed on site employee.” He also represented that he did not  
7 have a license to work on the Garden City premises, had surrendered his employee license  
8 in 2008, and was “no longer allowed to work on site.” He further represented that he had  
9 a settlement agreement with the City of San Jose under which he surrendered the license.  
10 He additionally represented that he was not involved in the operations of Garden City and  
11 did not spend any time there. Swallow has been licensed continuously by the  
12 Commission since 2007. Neither the Commission nor the City of San Jose prevented him  
13 from being on Garden City’s premises. Moreover, despite these representations to the  
14 FTB, Swallow has asserted that he has worked tirelessly to turn Garden City into a  
15 successful and profitable endeavor. He further has asserted that he has worked hard to  
16 revitalize, and has been a watchful steward of, Garden City by improving and streamlining  
17 its business operation, training its workforce, and expanding its customer base.

18 (c) Swallow, directly or through agents, made false and misleading statements to the  
19 Commission. Among other things, Swallow represented to the Commission that an  
20 accounting firm had provided the pricing model that was used to determine what to charge  
21 Garden City for Profitable Casino’s software and Dolchee’s games. Swallow further  
22 represented that he had a written opinion of value from his accountant’s firm. These  
23 representations were false. Swallow’s accountant represented that measures put in place  
24 by Swallow and Peter Lunardi increased profits, or “the bottom line,” by \$13 million  
25 between 2008 and 2009. In truth, the net profits – i.e., the bottom line – declined from  
26 approximately \$1.7 million in 2008 to approximately \$37,000 in 2009. That was a 97.8  
27 percent decline. As a further example, Swallow represented to the Commission that he  
28 had documents evidencing certain consulting services provided by Casino M8trix, Inc. to

1 Dolchee, as well as a contract for the payment of approximately \$6 million by Dolchee for  
2 those services. Despite his agreeing to do so, Swallow never provided such documents or  
3 contract to the Bureau or the Commission.

4 (d) Swallow, directly or through agents, engaged in patterns and practices that  
5 demonstrate a substantial disregard for prudent and usual business controls and oversight.  
6 His patterns and practices included creating layers of entities and self-dealing. His  
7 patterns and practices also included financial dealings involving millions of dollars that  
8 were not documented. Such undocumented transactions include, among others and  
9 without limitation, paying consulting fees without written consulting agreements, paying  
10 rents without leases, making equity contributions without related written agreements,  
11 advancing or providing monies for the benefit of affiliates without notes or similar written  
12 agreements, paying out millions of dollars without invoices, engaging in transactions with  
13 related parties at unfair and inflated prices, and reporting inaccurate and incomplete  
14 information to governmental agencies.

15 (e) Swallow, directly or through agents, submitted fraudulent information to state and  
16 federal taxing authorities. Examples include, but are not limited to, matters alleged in this  
17 subparagraph. Swallow was designated as Dolchee's "Tax Matters Partner." For 2010,  
18 Garden City's financial statements reported payments totaling approximately \$8.7 million  
19 to Dolchee, which reported approximately \$6.5 million in gross receipts on its federal tax  
20 return -- a \$2.2 million or 33.8 percent under-reported difference. On the same return,  
21 Dolchee reported that it paid, and therefore deducted, \$3.2 million for "consulting"  
22 services. In response to the Bureau's request, Swallow provided information regarding  
23 the consulting fees. That information demonstrated that (1) approximately \$500,000 in  
24 fees were paid without invoice or written agreement and (2) \$2,750,000 was paid pursuant  
25 to a settlement agreement, which did not denominate the payments as being for consulting  
26 services. The lawsuit that was settled alleged an entitlement to what in effect were finders  
27 fees; such fees properly are amortized, and not expensed. Importantly, Dolchee was not a  
28 party to the settlement. In 2011, Garden City's financial statements reported payments

1 totaling \$11.8 million to Dolchee, which reported approximately \$11.4 million in gross  
2 receipts on its federal tax return. On the same return Dolchee reported that it paid, and  
3 therefore deducted, \$1.1 million for rent and \$5.7 million for "consulting" services. In  
4 response to the Bureau's request, Swallow provided information showing that Dolchee  
5 funded \$7,650,000 as "Equity Funding Contribution[s]" for 1887 Matrix Boulevard.  
6 Swallow also responded that all funds for Casino M8trix, Inc. to pay rent to Airport  
7 Parkway came from Dolchee. Casino M8trix, Inc. paid more than \$7.3 million in rent in  
8 2011. Neither equity contributions nor monies advanced, loaned, or otherwise provided to  
9 another entity to use for its own purposes or benefit are deductible. Moreover, the sum of  
10 the "Equity Funding Contributions" and deductions taken on Dolchee's tax return exceed  
11 its reported income for 2011 by more than \$3 million or 26.7 percent.

12 (f) Swallow aided, facilitated, turned a blind eye to, or benefited from Team View  
13 Player Services's violations of the Act or regulations adopted pursuant to the Act.

14 (g) Swallow aided, facilitated, turned a blind eye to, or benefited from accounting for  
15 self-dealing and related party transactions, and the self-dealing itself, that had the effect of  
16 minimizing payments to be made to charity pursuant to the settlement reached with the  
17 City of San Jose. Through the self-dealing and concomitant accounting, Swallow  
18 facilitated Garden City's failure to abide by, and perform, the covenant of good faith and  
19 fair dealing inherent in its settlement agreement with the City of San Jose.

20 (h) Swallow aided, facilitated, turned a blind eye to, or benefited from acts and  
21 omissions that violated San Jose Municipal Code, title 16.

22 (i) Swallow aided, facilitated, turned a blind eye to, or benefited from monies derived  
23 from the play or carrying on of a controlled game that were paid indirectly to the Swallow  
24 Trust and/or Deborah Swallow, and neither was licensed as required under the Act.  
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1                                   **SEVENTH CAUSE FOR DISCIPLINE**  
2                                   **AGAINST RESPONDENT SWALLOW'S LICENSE**  
3                                   **(Disqualified for Licensure)**

4           47. Swallow's license is subject to discipline, pursuant to Business and Professions Code  
5 sections 19823 and 19859, subdivision (a). Swallow's continued licensure is inimical to public  
6 health, safety, and welfare. Swallow is not a person of good character, honesty, and integrity  
7 and his prior activities pose a threat to the effective regulation and control of controlled  
8 gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods,  
9 and activities in carrying on the business and financial arrangements incidental to the conduct of  
10 controlled gambling. Swallow knew of, should have known of, was willfully ignorant of,  
11 allowed to occur, assisted, abetted and/or tolerated the acts and omissions alleged above. He  
12 fostered a culture of operating in disregard of the laws applicable to gambling.

13                                   **EIGHTH CAUSE FOR DISCIPLINE**  
14                                   **AGAINST RESPONDENT PETER LUNARDI'S LICENSE**  
15                                   **(Unqualified for Licensure)**

16           48. Peter Lunardi's license is subject to discipline, pursuant to Business and Professions  
17 Code sections 19823 and 19857, subdivisions (a) and/or (b). Peter Lunardi's continued  
18 licensure is inimical to public health, safety, and welfare. Peter Lunardi is not a person of good  
19 character, honesty, and integrity and his prior activities pose a threat to the effective regulation  
20 and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or  
21 illegal practices, methods, and activities in carrying on the business and financial arrangements  
22 incidental to the conduct of controlled gambling. In addition to the acts and omissions alleged  
23 above, Peter Lunardi's conduct demonstrates that he is unqualified for licensure. That conduct  
24 includes, among other things and without limitation, the following:

25           (a) Peter Lunardi, directly or through agents, engaged in, aided, or accepted the  
26 benefits of patterns and practices that demonstrate a substantial disregard for prudent and  
27 usual business controls and oversight. Those patterns and practices included creating  
28 layers of entities and self-dealing. Those patterns and practices also included financial

1 dealings involving millions of dollars that were not documented. Such undocumented  
2 transactions include, among others and without limitation, paying consulting fees without  
3 written consulting agreements, paying rents without leases, making equity contributions  
4 without related written agreements, advancing or providing monies for the benefit of  
5 affiliates without notes or similar written agreements, paying out millions of dollars  
6 without invoices, engaging in transactions with related parties at unfair and inflated prices,  
7 and reporting inaccurate and incomplete information to governmental agencies.

8 (b) As a member of Dolchee, Peter Lunardi benefited from Swallow, or their agents,  
9 submitting fraudulent information to state and federal taxing authorities. Examples  
10 include, but are not limited to, matters alleged above in paragraph 46(e). That paragraph  
11 is incorporated herein by reference.

12 (c) Peter Lunardi aided, facilitated, turned a blind eye to, or benefited from Garden  
13 City's and Swallow's violations of the Act or regulations adopted pursuant to the Act.  
14 Peter Lunardi knew or should have known, facilitated, or turned a blind eye to, or  
15 benefited, or stood to benefit, from the acts and omissions alleged in paragraphs 44(a),  
16 44(e), 44(f), 44(g), 44(h), 44(k), 44(l), 46(a), 46(c), 52, and 53. Those paragraphs are  
17 incorporated herein by reference.

18 (d) Peter Lunardi aided, facilitated, turned a blind eye to, or benefited from Team  
19 View Player Services's violations of the Act or regulations adopted pursuant to the Act.  
20 He signed the contract with Team View Player Services on behalf of Garden City.  
21 Through the Lunardi Trust and the distributions or dividends paid through Dolchee and  
22 Potere, he benefited, or stood to benefit, from payments received by Garden City that were  
23 prohibited by Business and Professions Code section 19984, subdivision (a).

24 (e) Peter Lunardi aided, facilitated, turned a blind eye to, or benefited from the  
25 accounting for self-dealing and related party transactions, and the self-dealing itself, that  
26 had the effect of minimizing payments to be made to charity pursuant to the settlement  
27 reached with the City of San Jose. Through the self-dealing and concomitant accounting,  
28 Peter Lundardi facilitated and aided Garden City's failure to abide by, and perform, the



1 covenant of good faith and fair dealing inherent in its settlement agreement with the City  
2 of San Jose.

3 (f) Peter Lunardi aided, facilitated, or turned a blind eye to, or benefited from acts and  
4 omissions that violated San Jose Municipal Code, title 16. Those acts and omissions are  
5 alleged in paragraphs 46(a), 52, and 53 of this Accusation and incorporated herein by  
6 reference.

7 (g) Peter Lunardi aided, facilitated, or turned a blind eye to monies derived from the  
8 play or carrying on of a controlled game that was paid indirectly to the Swallow Trust  
9 and/or Deborah Swallow, and neither was licensed as required under the Act.

10 **NINTH CAUSE FOR DISCIPLINE**  
11 **AGAINST RESPONDENT PETER LUNDARDI'S LICENSE**  
12 **(Disqualified for Licensure)**

13 49. Peter Lunardi's license is subject to discipline, pursuant to Business and Professions  
14 Code sections 19823, 19859, subdivision (a), and 19920. Peter Lundardi's continued licensure  
15 is inimical to public health, safety, and welfare. Peter Lunardi is not a person of good character,  
16 honesty, and integrity and his prior activities pose a threat to the effective regulation and control  
17 of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal  
18 practices, methods, and activities in carrying on the business and financial arrangements  
19 incidental to the conduct of controlled gambling. Peter Lunardi knew of, should have known  
20 of, was willfully ignorant of, allowed to occur, assisted, abetted and/or tolerated the acts and  
21 omissions alleged in paragraphs 43, 44(a), 44(d), 44(e), 44(f), 44(g), 44(h), 44(k), 44(l), 46(a),  
22 46(c), 46(d), 46(e), 52, and 53. Those paragraphs are incorporated herein by reference. He  
23 fostered a culture of operating in disregard of the laws applicable to gambling.  
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**TENTH CAUSE FOR DISCIPLINE  
AGAINST RESPONDENT JEANINE LUNARDI'S LICENSE  
(Unqualified for Licensure)**

50. Jeanine Lunardi's license is subject to discipline, pursuant to Business and Professions Code sections 19823 and 19857, subdivisions (a) and/or (b). Jeanine Lunardi's continued licensure is inimical to public health, safety, and welfare. Jeanine Lunardi is not a person of good character, honesty, and integrity and her prior activities pose a threat to the effective regulation and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and financial arrangements incidental to the conduct of controlled gambling. In addition to the acts and omissions alleged above, Jeanine Lunardi's conduct in her affairs demonstrates that she is unqualified for licensure. That conduct includes, among other things and without limitation, the following:

(a) Jeanine Lunardi, directly or through agents, engaged in, aided, or accepted the benefits of patterns and practices that demonstrate a substantial disregard for prudent and usual business controls and oversight. Those patterns and practices include creating layers of entities and self-dealing. Those patterns and practices also included financial dealings involving millions of dollars that were not documented. Such undocumented transactions include, among others and without limitation, paying consulting fees without written consulting agreements, paying rents without leases, making equity contributions without related written agreements, advancing or providing monies for the benefit of affiliates without notes or similar written agreements, paying out millions of dollars without invoices, engaging in transactions with related parties at unfair and inflated prices, and reporting inaccurate and incomplete information to governmental agencies.

(b) Jeanine Lunardi benefited from Swallow, or their agents, submitting fraudulent information to state and federal taxing authorities. Examples include, but are not limited to, matters alleged above in paragraph 46(e). That paragraph is incorporated herein by reference.

1 (c) Jeanine Lundardi aided, facilitated, turned a blind eye to, or benefited from  
2 Garden City's and Swallow's violations of the Act or regulations adopted pursuant to the  
3 Act. Jeanine Lundardi knew or should have known, facilitated, or turned a blind eye to, or  
4 benefited, or stood to benefit, from the acts and omissions alleged in paragraphs 44(f),  
5 44(l), 46(a), 52, and 53. Those paragraphs are incorporated herein by reference.

6 (d) Jeanine Lunardi aided, facilitated, turned a blind eye to, or benefited from Team  
7 View Player Services's violations of the Act or regulations adopted pursuant to the Act.  
8 Through the Lunardi Trust and distributions and dividends paid to Peter Lunardi's  
9 affiliates, she benefited, or stood to benefit, from payments received by Garden City that  
10 were prohibited by Business and Professions Code section 19984, subdivision (a).

11 (e) Jeanine Lunardi aided, facilitated, turned a blind eye to, or benefited from the  
12 accounting for self-dealing and related party transactions, and the self-dealing itself, that  
13 had the effect of minimizing payments to be made to charity pursuant to the settlement  
14 reached with the City of San Jose. Through the self-dealing and concomitant accounting,  
15 Jeanine Lundardi facilitated and aided Garden City's failure to abide by, and perform, the  
16 covenant of good faith and fair dealing inherent in its settlement agreement with the City  
17 of San Jose.

18 (f) Jeanine Lunardi aided, facilitated, turned a blind eye to, or benefited from acts  
19 and omissions that violated San Jose Municipal Code, title 16. Those acts and omissions  
20 are alleged in paragraphs 46(a), 52, and 53 of this Accusation and incorporated herein by  
21 reference.

22 **ELEVENTH CAUSE FOR DISCIPLINE**  
23 **AGAINST RESPONDENT JEANINE LUNDARDI'S LICENSE**  
24 **(Disqualified for Licensure)**

25 51. Jeanine Lunardi's license is subject to discipline, pursuant to Business and  
26 Professions Code sections 19823, 19859, subdivision (a), and 19920. Jeanine Lundardi's  
27 continued licensure is inimical to public health, safety, and welfare. Jeanine Lundardi is not a  
28 person of good character, honesty, and integrity and her prior activities pose a threat to the

1 effective regulation and control of controlled gambling, and create or enhance the dangers of  
2 unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and  
3 financial arrangements incidental to the conduct of controlled gambling. Jeanine Lunardi knew  
4 of, should have known of, was willfully ignorant of, allowed to occur, assisted, abetted and/or  
5 tolerated the acts and omissions alleged in paragraphs 43, 44(f), 44(l), 46(a), 46(d), 46(e), 52,  
6 and 53. Those paragraphs are incorporated herein by reference. She fostered a culture of  
7 operating in disregard of the laws applicable to gambling.

8 **TWELFTH CAUSE FOR DISCIPLINE**  
9 **AGAINST RESPONDENT LUNARDI TRUST'S LICENSE**  
10 **(Unqualified for Licensure)**

11 52. The Lunardi Trust's license is subject to discipline, pursuant to Business and  
12 Professions Code sections 19823 and 19857, subdivisions (a) and (b). The Lunardi Trust's  
13 continued licensure is inimical to public health, safety, and welfare. Its prior activities pose a  
14 threat to the effective regulation and control of controlled gambling, and create or enhance the  
15 dangers of unsuitable, unfair, or illegal practices, methods, and activities in carrying on the  
16 business and financial arrangements incidental to the conduct of controlled gambling. Pursuant  
17 to Business and Professions Code section 19852, subdivision (e), the Lunardi Trust is not  
18 eligible for continued licensure because its trustees are disqualified or unqualified from holding  
19 a state gambling license. Additionally, the Lunardi Trust's trustees conducted Garden City's  
20 business in substantial disregard of prudent and usual business controls and oversight. The  
21 Lunardi Trust assisted and facilitated transactions that were fraudulently reported to federal and  
22 state taxing authorities. The Lunardi Trust also allowed the play of games at Garden City that  
23 were not approved by the Bureau or City of San Jose. Such play constituted an unsuitable  
24 gaming activity (Cal. Code Regs., tit. 11, § 2070, subd. (b)) and violates the City of San Jose's  
25 laws.

**THIRTEENTH CAUSE FOR DISCIPLINE  
AGAINST RESPONDENT GARDEN CITY'S LICENSE  
(Unqualified for Licensure)**

53. In addition to discipline for having a direct or indirect interest in the funds wagered, lost, or won by a third-party provider, Garden City's license is subject to discipline, pursuant to Business and Professions Code sections 19823 and 19857, subdivisions (a) and (b). Garden City's continued licensure is inimical to public health, safety, and welfare. Its prior activities pose a threat to the effective regulation and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in carrying on the business and financial arrangements incidental to the conduct of controlled gambling. Pursuant to Business and Professions Code section 19852, subdivision (a), Garden City is not eligible for continued licensure because its shareholders, officers, and directors are disqualified from holding a state gambling license. Additionally, Garden City's owners conducted its business in substantial disregard of prudent and usual business controls and oversight. Garden City assisted and facilitated transactions that were fraudulently reported to federal and state taxing authorities. Garden City also allowed the play of games that were not approved by the Bureau or City of San Jose. Such play constituted an unsuitable gaming activity (Cal. Code Regs., tit. 11, § 2070, subd. (b)) and violates the City of San Jose's laws.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Commission issue a decision:

1. Revoking or suspending California State Gambling License Number GEGE-000410, issued to Garden City, Inc., doing business as Casino M8trix;
2. Fining Garden City, Inc., doing business as Casino M8trix, in an amount according to proof and to the maximum extent allowed by law;
3. Revoking or suspending California State Gambling License Number GEOW-001330, issued to Eric Swallow;



1 4. Fining Eric Swallow in an amount according to proof and to the maximum extent  
2 allowed by law;

3 5. Revoking or suspending California State Gambling License Number GEOW-001331,  
4 issued to Peter Lunardi;

5 6. Fining Peter Lunardi in an amount according to proof and to the maximum extent  
6 allowed by law;

7 7. Revoking or suspending California State Gambling License Number GEOW-003119,  
8 issued to Jeanine Lunardi;

9 8. Fining Jeanine Lunardi in an amount according to proof and to the maximum extent  
10 allowed by law;

11 9. Revoking or suspending California State Gambling License Number GEOW-003259,  
12 issued to the Lunardi Family Living Trust, dated August 27, 2008;

13 10. Fining the Lunardi Family Living Trust, dated August 27, 2008, in an amount  
14 according to proof and to the maximum extent allowed by law;

15 11. Awarding Complainant the costs of investigation and costs of bringing this  
16 Accusation before the Commission, pursuant to Business and Professions Code section 19930,  
17 subdivisions (d) and (f), in a sum according to proof; and

18 12. Taking such other and further action as the Commission may deem appropriate.

19  
20 Dated: May 2<sup>nd</sup>, 2014



WAYNE J. QUINT, JR., Chief  
Bureau of Gambling Control  
California Department of Justice

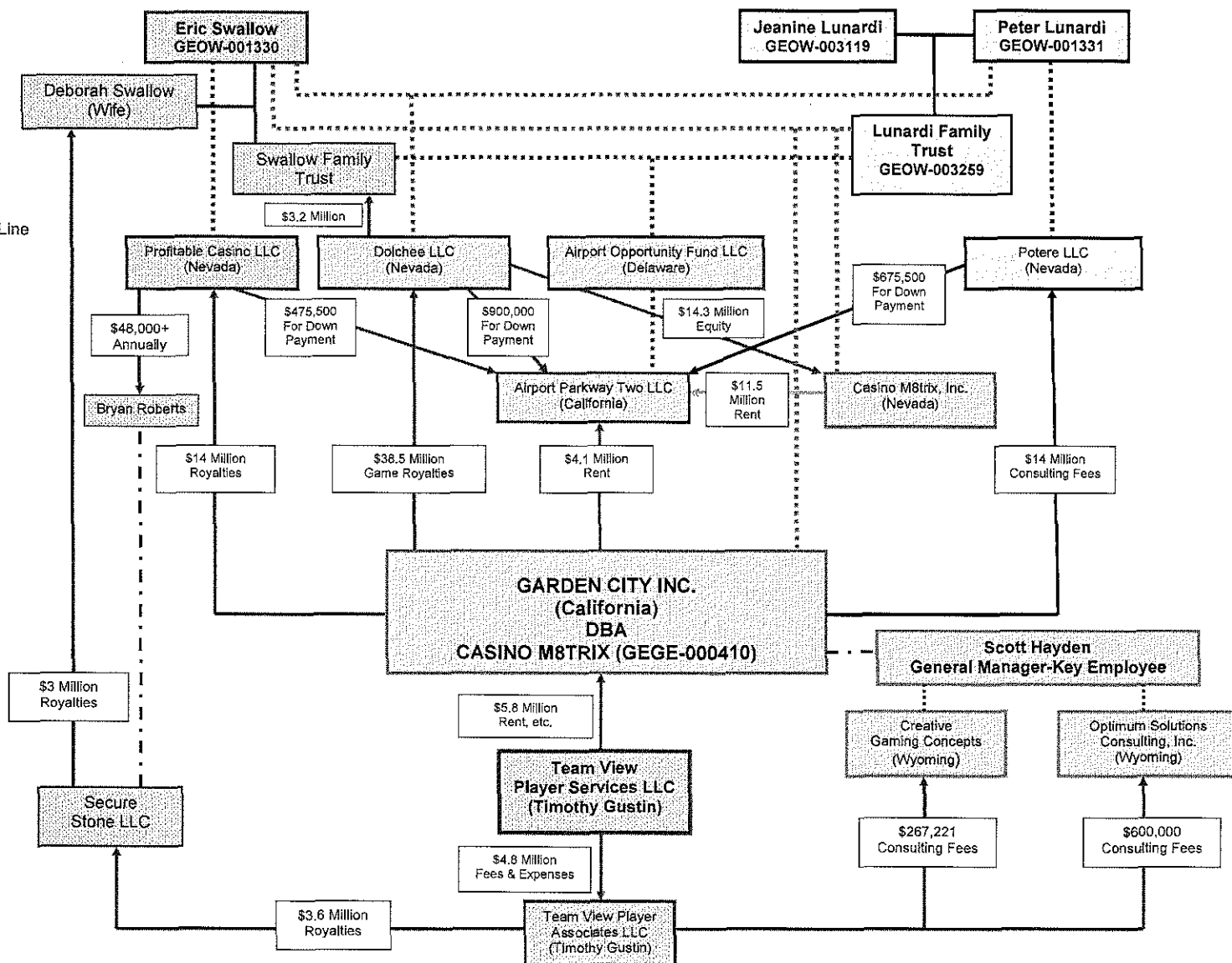
**EXHIBIT A**  
**Relationships and Cash Flows**  
**2010-2012**

**Key:**

Ownership: Dotted Line

Cash Flow: Solid Line

Employment or Other: Broken Line



## **EXHIBIT 2**

1 KAMALA D. HARRIS  
Attorney General of California  
2 SARA J. DRAKE  
Senior Assistant Attorney General  
3 WILLIAM P. TORNGREN  
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*Attorneys for the Complainant*

8  
9 **BEFORE THE**  
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**  
11 **STATE OF CALIFORNIA**  
12  
13

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

16 **GARDEN CITY, INC., doing business as**  
**CASINO M8TRIX (GECE-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**

**STIPULATED SETTLEMENT;**  
**DECISION AND ORDER**

26 The parties to this Stipulated Settlement, for themselves and no other party, enter into  
27 this Stipulated Settlement to resolve finally the above-titled Accusation and Statement of Issues.  
28

**Stipulated Settlement; Decision and Order**



1                                    **PURPOSE OF THIS STIPULATED SETTLEMENT**

2            This Stipulated Settlement finally resolves the allegations set forth in the Accusation and  
3    Statement of Issues as they pertain to Respondents Garden City, Inc. (Garden City), Peter V.  
4    Lunardi III (Mr. Lunardi), Jeanine Lynn Lunardi (Mrs. Lunardi), and the Lunardi Family Living  
5    Trust, dated August 27, 2008 (Lunardi Trust) (collectively, Respondents). This Stipulated  
6    Settlement does not resolve any allegations as they pertain to Eric G. Swallow (Mr. Swallow).  
7    The Accusation and Statement of Issues seeks to discipline Respondents' licenses – by denial of  
8    renewal, revocation, suspension, and/or fine as appropriate – for violations of, and lack of  
9    suitability for continued licensing under, the Act and the regulations adopted pursuant to the  
10   Act. The Accusation and Statement of Issues alleges that Respondents, and Mr. Swallow,  
11   engaged in self-dealing through affiliated entities to reduce Garden City's reported net income,  
12   caused payments to be made to persons and entities not licensed under the Act, engaged in and  
13   received undocumented transactions and payments, and allowed, engaged in, and accepted the  
14   benefits of patterns and practices that demonstrate a disregard for prudent and usual business  
15   ~~controls and oversight. The Accusation and Statement of Issues further alleges that~~  
16   Respondents had prohibited interests in the funds wagered, lost, and won by the company  
17   providing third-party proposition player services to Garden City. Respondents denied, and  
18   contested, the allegations set forth in the Accusation and Statement of Issues. To resolve the  
19   Accusation and Statement of Issues, the parties hereby stipulate as follows.

20                                    **PARTIES**

21            1.        Wayne J. Quint, Jr. (Complainant) brought the above-titled Accusation and  
22    Statement of Issues solely in his official capacity as the Chief of the California Department of  
23    Justice, Bureau of Gambling Control (Bureau).

24            2.        Garden City is a licensed gambling enterprise, California State Gambling  
25    License Number GEGE-000410. That license expired on May 31, 2014, subject to the outcome  
26    of the Accusation and Statement of Issues. Garden City does business as Casino M8trix at 1887  
27    Matrix Boulevard in San Jose, California. It is a 49-table card room.

1           3.     Mr. Lunardi, license number GEOW-001331, was a shareholder of Garden City,  
2 is a trustee of the Lunardi Trust, and is endorsed on Garden City's license. Mrs. Lunardi,  
3 license number GEOW-003119, also was a shareholder of Garden City, is a trustee of the  
4 Lunardi Trust, and is endorsed on Garden City's license. The Lunardis are husband and wife.  
5 On August 12, 2010, the California Gambling Control Commission (Commission) approved the  
6 transfer of the Lunardis' shares, and issued license number GEOW-003259, to the Lunardi  
7 Trust, which then was endorsed on Garden City's license. Mr. Swallow<sup>1</sup> and the Lunardi Trust  
8 each own 50 percent of Garden City's stock and constitute all of its shareholders. Their  
9 licenses expired on May 31, 2014, subject to the outcome of the Accusation and Statement of  
10 Issues.

11           4.     Collectively, Garden City, Mr. Lunardi, Mrs. Lunardi, and the Lunardi Trust are  
12 referred to as "Respondents" or "Respondent" in this Stipulated Settlement.

#### 13                                   JURISDICTION

14           5.     On or about May 2, 2014, each Respondent was served with an Accusation  
15 bearing the above title; as well as a Statement to Respondent (Gov. Code, § 11505, subd. (b));  
16 Request for Discovery (Gov. Code, § 11597.6); copies of Government Code sections 11507.5,  
17 11507.6 and 11507.7; and two copies of the Notice of Defense form (Gov. Code, §§ 11505 &  
18 11506). After the Commission referred Respondents' license renewal applications to an  
19 evidentiary hearing, each Respondent was served with the above-titled Accusation and  
20 Statement of Issues.

21           6.     Each Respondent caused a timely Notice of Defense to be delivered to  
22 Complainant's attorneys.

#### 23                                   ADVISEMENT AND WAIVERS

24           7.     Each Respondent has reviewed carefully, and has discussed with counsel, the  
25 legal and factual allegations in the Accusation and Statement of Issues. Each Respondent also

26           <sup>1</sup> The Accusation and Statement of Issues names Mr. Swallow and alleges numerous  
27 violations against him. Mr. Swallow is not a party to this Stipulated Settlement. An  
28 Administrative Law Judge assigned by the Office of Administrative Hearings presently is  
scheduled to hear the case against Mr. Swallow beginning on June 15, 2015.

1 has reviewed carefully, and has discussed with counsel, this Stipulated Settlement. Each  
2 Respondent fully understands the terms and conditions contained within this Stipulated  
3 Settlement and the effects thereof.

4 8. Each Respondent is fully aware of its, her, or his legal rights in this matter.  
5 Those rights include: the right to a hearing on all the allegations in the Accusation and  
6 Statement of Issues; the right to be represented by counsel of its, her, or his choice at its, her, or  
7 his own expense; the right to confront and cross-examine the witnesses against it, her, or him;  
8 the right to present evidence and testify on its, her, or his own behalf; the right to the issuance  
9 of subpoenas to compel the attendance of witnesses and the production of documents; the right  
10 to apply for reconsideration and court review of an adverse decision; and all other rights  
11 afforded by the California Administrative Procedure Act (Gov. Code, § 11370 et seq.), the  
12 California Gambling Control Act (Act) (Bus. & Prof. Code, § 19800 et seq.), and all other  
13 applicable laws.

14 9. Each Respondent voluntarily, knowingly and intelligently waives and gives up  
15 each and every right set forth in paragraph 8 above, withdraws its, her, or his request for a  
16 hearing on the Accusation and Statement of Issues, and agrees to be bound by this Stipulated  
17 Settlement.

#### 18 STIPULATED ADMISSIONS

19 10. Respondents admit the truth of the following facts:

20 a. Garden City has been licensed as a card room in the City of San Jose since  
21 approximately 1976. In 1998, it filed for bankruptcy protection. In 2005, Mr.  
22 Swallow, Mr. Lunardi, and Mrs. Lunardi, along with Dina DiMartino, entered  
23 into a stock purchase agreement to acquire Garden City's stock from the  
24 bankruptcy trustee under a proposed reorganization plan. On January 5, 2006,  
25 the Commission approved the stock purchase agreement. On March 22, 2007,  
26 Ms. DiMartino withdrew her state gambling license application. Mr. Swallow,  
27 Mr. Lunardi, and Mrs. Lunardi purchased all issued and outstanding stock in  
28 Garden City in 2007. The Commission first endorsed Mr. Swallow, Mr.

1 Lunardi, and Mrs. Lunardi on Garden City's license on March 1, 2007. In  
2 August 2010, Mr. Lunardi and Mrs. Lunardi transferred their shares to the  
3 Lunardi Trust.

4 b. In connection with the Garden City acquisition, Mr. Swallow and the Lunardis  
5 received financing from Comerica Bank, a federally regulated commercial  
6 lender. That financing has been extended on several occasions. It is secured by  
7 Garden City's assets and by the stock acquired by the Mr. Swallow and the  
8 Lunardis. The initial financing and extensions were not presented to the  
9 Commission for review or approval.

10 c. On or about July 17, 2008, the Lunardis, Mr. Swallow, and Deborah Swallow  
11 entered into a Buy-Sell Agreement relating to Garden City stockholdings. That  
12 agreement states: "Eric Swallow and Pete V. Lunardi, III actively manage the  
13 business of the Corporation. Each of them performs approximately half of the  
14 overall work. If Eric were to die or become incapacitated, then his wife Deborah  
15 would take his place." Deborah Swallow does not have, and never has applied  
16 for, a state gambling license.

17 d. Since the acquisition of Garden City, Mr. Lunardi was the corporate president  
18 and chairman of the board of directors. Mr. Swallow was the corporate  
19 secretary. Mrs. Lunardi was not a corporate officer. The board of directors  
20 consisted of three directors. At all times, the directors were the Lunardis and  
21 Mr. Swallow. In his capacity as president, Mr. Lunardi signed nearly all  
22 contracts and agreements on Garden City's behalf.

23 e. On May 25, 2007, Dolchee LLC (Dolchee) was lawfully formed as a California  
24 limited liability company. At all times since formation and according to its  
25 organizational documents, its only members have been the Eric G. and Deborah  
26 A. Swallow Family Trust dated August 31, 2004 (Swallow Trust) and the  
27 Lunardi Trust. The trustees of the Swallow Trust are Mr. Swallow and his wife  
28 Deborah. Dolchee's federal tax returns for 2008 to 2013, however, listed only

1 two members, Mr. Swallow and Mr. Lunardi. Neither the Swallow Trust nor  
2 Deborah Swallow has, or has applied for, a state gambling license.

3 f. In 2007 and 2008, Dolchee filed for trademarks on the name "Baccarat Gold."  
4 Dolchee has no other trademarks registered in its name with the United States  
5 Patent and Trademark Office. On December 31, 2008, Dolchee was lawfully  
6 converted out of California to be a Nevada limited liability company. By an  
7 undated License Agreement made as of January 1, 2009, Dolchee agreed to  
8 provide certain denominated games to Garden City for a monthly minimum  
9 payment of \$400,000, or \$4.8 million annually. The agreement does not contain  
10 any provision for determining any amount above the minimum. Between  
11 January 1, 2009, and December 31, 2012, Garden City's payments to Dolchee  
12 totaled \$38,482,000; during that time period, Garden City always paid more than  
13 the minimum annually. No invoices or similar billing documents or statements  
14 exist with respect to the payments exceeding the minimum.

15 g. On July 21, 2008, Profitable Casino LLC (Profitable Casino) was formed as a  
16 California limited liability company. Its sole member is Mr. Swallow. On  
17 December 31, 2008, Profitable Casino was converted out of California to be a  
18 Nevada limited liability company. By an undated Application Service Provider  
19 Agreement made as of January 1, 2009, Profitable Casino agreed to provide  
20 access to certain computer applications to Garden City for a monthly minimum  
21 consulting fee of \$400,000, or \$4.8 million annually. Profitable Casino was to  
22 invoice Garden City for any fees exceeding the minimum. Between January 1,  
23 2009, and December 31, 2012, Garden City's payments to Profitable Casino  
24 totaled \$14,050,000. No invoices or similar billing documents or statements  
25 exist with respect to the payments.

26 h. On December 31, 2008, Potere LLC (Potere) was lawfully formed as a Nevada  
27 limited liability company. Its sole member is Mr. Lunardi. By an undated  
28 Vendor Contractor Agreement made as of January 1, 2009, Potere agreed to

1 provide general business consulting to Garden City for a monthly minimum  
2 consulting fee of \$400,000, or \$4.8 million annually. Potere was to invoice on a  
3 monthly basis for all hours worked and to provide services on Garden City's  
4 premises during regular business hours. Between January 1, 2009, and  
5 December 31, 2012, Garden City's payments to Potere totaled \$14,050,000,  
6 which was equal to the payments made to Profitable Casino. No invoices or  
7 similar billing documents or statements exist with respect to the payments.

8 i. Garden City accounted for its payments to Dolchee, Profitable Casino, and  
9 Potere (collectively, Related Companies) as expenses, and not as dividends or  
10 distributions to its owners. The Lunardis agreed to the organizational and  
11 payment structure to accommodate Mr. Swallow's move from California to  
12 Nevada. The structure reduced Mr. Swallow's, but not the Lunardis', tax  
13 liability to the State of California. As a consequence of expensing those  
14 payments, Garden City's net income ranged between approximately minus 0.31  
15 percent and 1.42 percent of its gross gaming revenues between January 1, 2009,  
16 and December 31, 2012. For three of those four years, Garden City's net income  
17 was essentially zero. In 2013, Garden City's net loss exceeded \$500,000.

18 j. No invoices exist with respect to the payments to the Related Companies.  
19 Respondents agreed as a standard practice to estimate annual payments to the  
20 Related Companies and then make monthly payments based upon available cash  
21 flow. None of the Related Companies has, or has applied for, a state gambling  
22 license. Potere's and Profitable Casino's owners were licensed by the  
23 Commission. One of Dolchee's two owners – i.e., the Lunardi Trust – was  
24 licensed by the Commission; three of the four trustees involved in the two trusts  
25 were licensed.

26 k. On May 30, 2014, Complainant issued an emergency order to Garden City. On  
27 June 23, 2014, Complainant issued an amended order (AEO). Respondents have  
28 fully complied in all respects with the AEO. Under the AEO's terms, Garden

1 City, among other things, was prevented from making payments to the Related  
2 Companies. For calendar year 2014, Garden City's net income was  
3 approximately 25 percent of its gross gaming revenues despite making payments  
4 to the Related Companies before the AEO's issuance. Dolchee's operating  
5 agreement requires a unanimous vote of the members; as a result, the Lunardis  
6 cannot unilaterally cause dissolution.

7 l. On April 1, 2009, Dolchee entered into a licensing agreement for Baccarat Gold  
8 with a California tribal casino. The monthly payment under that licensing  
9 agreement is \$1,200 per table per month. On June 1, 2009, Dolchee entered into  
10 a licensing agreement for Baccarat Gold with a card room other than Garden  
11 City. Mr. Lunardi is informed by the Bureau that the monthly payment under  
12 that licensing agreement is \$1,200 per table per month for a minimum of two  
13 tables. On November 17, 2009 – 11 months after the effective date of the  
14 License Agreement described above – a patent for Baccarat Gold was issued to  
15 Scott Hayden, who at the time was Garden City's general manager. Mr. Hayden  
16 subsequently assigned the patent to Dolchee for no payment.

17 m. On November 25, 2009, Airport Parkway Two LLC (Airport Parkway) was  
18 lawfully formed as a California limited liability company. Its sole member is  
19 Airport Opportunity Fund LLC (Airport Fund), which was formed as a Delaware  
20 limited liability company on December 3, 2009. Airport Fund's members are the  
21 Lunardi Trust and the Swallow Trust. Each trust owns a 50-percent interest in  
22 Airport Fund. Neither the Swallow Trust nor Deborah Swallow has, or has  
23 applied for, a state gambling license.

24 n. On January 20, 2010, Airport Parkway closed an \$8 million real estate purchase.  
25 Airport Parkway used approximately \$2 million provided by the Related  
26 Companies as a down payment and financed the \$6 million balance with  
27 Comerica Bank, a federally regulated commercial lender. No written agreements  
28 exist between Airport Parkway, on the one hand, and any of the Related



1 Companies, on the other, with respect to this funding. Documents provided to  
2 the City of San Jose report the funds as capital contributions while documents  
3 provided to the Bureau report the funds as payments of consulting fees.

4 Subsequently, on March 22, 2011, an additional financing with Comerica Bank,  
5 a federally regulated commercial lender, closed. The financing is ostensibly  
6 secured by, among other things, Garden City's assets and investment securities  
7 of Mr. Swallow, Deborah Swallow, the Swallow Trust, and the Lunardi Trust,  
8 although this issue is the subject of litigation in the dissolution proceedings  
9 between Mr. Swallow and Deborah Swallow as it relates to the ownership of  
10 Garden City's shares. Neither the initial nor subsequent financing was  
11 presented to the Commission for review or approval.

12 o. The real property was improved with a new eight-story building to house  
13 gambling, entertainment, restaurant, meeting, office, and other facilities. The  
14 property's address was changed to 1887 Matrix Boulevard. In April 2012,  
15 Garden City and Airport Parkway entered into lease backdated to January 1,  
16 2011, for 1887 Matrix Boulevard. The lease provides for a fixed monthly rent of  
17 \$600,797.67 with no escalation over its 10-year term. Pursuant to the AEO, an  
18 independent appraiser established the monthly fair market rent of 1887 Matrix  
19 Boulevard as of November 2014 to be \$525,000.

20 p. The Lunardis, basing their belief solely upon information supplied by the  
21 Bureau, believe: (1) on January 21, 2010, Team View Player Services, LLC  
22 (Team View Player Services) was formed as a California limited liability  
23 company with Timothy M. Gustin as its sole member; (2) on February 22, 2010,  
24 Secure Stone, LLC (Secure Stone) was formed as a Delaware limited liability  
25 company with Deborah Swallow as its sole member; and (3) Secure Stone's  
26 address is the same as that of Airport Fund. On May 1, 2010, pursuant to an  
27 agreement dated March 30, 2010, and signed by Mr. Lunardi and Mr. Gustin,  
28 Team View Player Services agreed to provide third-party proposition player

- 1 services at Garden City. The Lunardis, basing their belief solely upon  
2 information supplied by the Bureau, believe that on or about May 1, 2010, Team  
3 View Player Services entered into a contract with Team View Player Associates,  
4 LLC ("Team View Associates") of which Mr. Gustin was the sole member and  
5 which, in turn, entered into an agreement with Secure Stone. The Lunardis have  
6 been further informed by the Bureau and believe that, pursuant to that  
7 agreement, Secure Stone received payments totaling approximately \$3.6 million.
- 8 q. Under an agreement dated August 22, 2012, with Garden City, Team View  
9 Player Services was to pay an annual fee of \$2,226,000, which included  
10 \$1,113,000 for parking in Garden City's parking lot, a designated area on the  
11 casino floor, and use of the casino area for meetings with employees. Under a  
12 previous agreement, Team View Player Services provided third-party  
13 proposition player services at Garden City's Saratoga Road location. When  
14 Garden City's operations moved to 1887 Matrix Boulevard, demand for parking  
15 exceeded capacity. Team View Player Services employees then were not  
16 allowed to park in Garden City's parking lot. Team View Player Services did  
17 not use any portion of the casino other than its office for meetings with  
18 employees. Team View Player Services' designated area was approximately 400  
19 square feet.
- 20 r. On August 7, 2012, Garden City, doing business as Casino M8trix, opened a  
21 new casino, entertainment, and conference facility at 1887 Matrix Boulevard.
- 22 s. Exhibit A to the Accusation and Statement of Issues is accurate in most material  
23 respects except (1) a conflict exists between the organizational documents and  
24 tax returns as to Dolchee's members and (2) Respondents have no knowledge of  
25 payments (a) from Team View Player Services to Team View Associates, (b)  
26 from Team View Associates to entities affiliated with Scott Hayden, (c) from  
27 Team View Associates to Secure Stone, (d) from Profitable Casino to Bryan  
28 Roberts, or (e) made by the Swallow Trust.

11. Respondents offer the following facts in mitigation:

- a. The Commission renewed Respondents' licenses in 2012. The City of San Jose issued Mr. Swallow and the Lunardis stock-ownership and key employee licenses in 2007, which were renewed in 2009, 2010, and 2012. The last renewal was for a three-year term after the City of San Jose was paid \$186,000 towards its investigative costs. Due to the lack of gaming operations experience by the licensees, the City of San Jose imposed requirements on the initial licenses mandating, among other things, that Garden City maintain an audit committee, employ an outside independent CPA, maintain a compliance committee with a chief compliance officer who had demonstrable "relevant gaming operational experience and sufficient knowledge of the California Gambling Control Act," and install an off-site surveillance monitoring system for use by San Jose's Gaming Administrator. In 2010, the City of San Jose prohibited Mr. Swallow and Mr. Lunardi from having any "direct involvement in the day-to-day operations of" Garden City. Neither Mr. Swallow nor Mr. Lunardi could "personally hire, terminate, direct or be personally and directly involved in the activities of Garden City employees involved in gaming and other sensitive areas of the casino operations . . . ." Mr. Lunardi's participation in Garden City's operations was limited by the City of San Jose's mandate to his membership in Garden City's operational committees and signing agreements as its president.
- b. As a consequence of the City of San Jose's limitations on his participation in Garden City's day-to-day operations, Mr. Lunardi delegated all such operations to general manager Scott Hayden.
- c. Mrs. Lunardi was not involved, and did not participate, in Garden City's operations.
- d. Garden City employed numerous outside attorneys and maintained an in-house counsel for the purpose of preparing, reviewing, revising, and finalizing Garden

1 City's contracts, which were then presented to Mr. Lunardi to sign in his  
2 capacity as president.

3 e. To the Lunardis' knowledge, Deborah Swallow has never participated in any of  
4 Garden City's operations. The Lunardis presumed that Deborah Swallow would  
5 need to obtain an Interim State Gambling License under California Code of  
6 Regulations, title 4, section 12349, before she could actively manage Garden  
7 City under the terms of the July 17, 2008 Buy-Sell Agreement.

8 f. The City of San Jose was informed of the payments from Garden City to  
9 Dolchee, but chose not to require Dolchee to obtain or hold any form of license  
10 in connection with Garden City's license renewal in 2012, which was based  
11 solely on a Landowners Licensing investigation. Dolchee's relationship with  
12 Garden City continued in the same manner as had already been examined by the  
13 City. In its July 13, 2012 license renewal report the Police Department  
14 expressed "concern as the regulating agency with millions of dollars flowing  
15 through Mr. Swallow and Mr. Lunardi's other business accounts without  
16 adequate accounting records. This is especially the case with Dolchee . . . ."  
17 Notwithstanding its concerns, in July 2012, the City of San Jose issued the  
18 Landowners License, while reserving its authority to call Dolchee forward as a  
19 financial source requiring licensure.

20 g. The Lunardis relied upon the advice of legal and accounting professionals in  
21 their acquisition of Garden City and the formation of entities affiliated with the  
22 owners. Since July 1, 2008, Garden City has been a "subchapter S" corporation  
23 ("S" Corp) under the Internal Revenue Code (IRC). Under section 1363(a) of  
24 the IRC, an "S" Corp does not pay federal income tax and all profits and losses  
25 are passed through directly to shareholders. Similarly, payments to Potere  
26 passed through directly to Mr. Lunardi, a California resident. This caused an  
27 increase in the Lunardis' federal self employment tax liability that, because it is a  
28

- 1 higher rate than the California corporate tax, resulted in their paying more  
2 federal taxes than if they had received their profits directly from Garden City.
- 3 h. As an "S" Corp, Garden City's profits (or losses) passed directly through to its  
4 shareholders as ordinary income (or loss), not as "dividends." Garden City's  
5 payments to the Related Companies were expensed on its books. The income to  
6 the Potere and Dolchee was legally and properly booked as and accounted for  
7 "business income." This income, after expenses were deducted, passed through  
8 to the respective owners, subjecting the Lunardis to federal taxes, a federal self  
9 employment tax, and, because Mr. Lunardi was a California resident, state  
10 income taxes. The net result for the Lunardis under what they were advised to  
11 be and thus understood to be lawful arrangements was that their overall federal  
12 taxes were higher than if Garden City's income had passed directly through to  
13 them. DLA Piper reviewed the tax returns for the Lunardis, Garden City,  
14 Dolchee and Potere (the Lunardi Related Entities) for years 2009-2012 and  
15 discovered (1) no material reporting errors in the tax returns and (2) no-material  
16 difference between (a) the California and federal tax liabilities reflected on the  
17 returns and (b) the taxes that would have been owed if Garden City had not made  
18 certain tax deductible tax payments to the Lunardi Related Entities.
- 19 i. Following the AEO's issuance, Respondents terminated their relationship with  
20 the following, among others: (1) Team View Player Services; (2) Scott Hayden,  
21 who was Garden City's general manager in charge of its day-to-day operations,  
22 tendered, and Garden City accepted, his resignation; (3) Jerome Bellotti, the  
23 CPA who audited the Garden City's financial statements and advised its  
24 shareholders with respect to the formation of, and accounting for transactions  
25 with, the Related Companies, is no longer doing work for Garden City; (4)  
26 Robert Lytle, who was Garden City's compliance officer and advisor and  
27 simultaneously under contract with Team View Player Services; (5) Antoinette  
28 McGill, Garden City's in-house attorney, who had advised regarding compliance

1 and corporate structuring matters; (6) Potere; (7) Profitable Casino; (8) Bryan  
2 Roberts, who purportedly worked for both Profitable Casino and Secure Stone  
3 and also was an information technology contractor for Garden City, (9)  
4 Imperium, Garden City's outsourced security and surveillance provider (those  
5 services are now provided in-house); (10) New York Food & Beverage, Garden  
6 City's outsourced food and beverage provider; (11) Flagship, Garden City's  
7 outsourced facilities service provider; (12) PMC, Garden City's outsourced  
8 janitorial services provider; and (13) Sean Kali Rai, Garden City's lobbyist.  
9 Further, Garden City accepted the resignation of Devon Kumar, it's outsourced  
10 Controller, effective June 30, 2014.

11 j. The Lunardis had no knowledge of Secure Stone, the payments made to it, or  
12 Bryan Roberts's work for Secure Stone.

13 12. Subject to the mitigating facts set forth in paragraph 11 above, Garden City  
14 admits to the following violations alleged in the Accusation and Statement of Issues:

15 a. From August 2012 until its contract was terminated, Team View Player Services  
16 paid for facilities that were not provided as set forth above; therefore, Garden  
17 City received more than \$1.1 million annually for renting 400 square feet to  
18 Team View Player Services. That fee was substantially disproportionate to the  
19 facilities provided. Garden City had a direct or indirect interest in funds  
20 wagered, lost, or won by Team View Player Services as described in  
21 subparagraph 10q above. Business and Professions Code section 19984,  
22 subdivision (a) prohibits the receipt of such payments.

23 b. Garden City, through its officer, director, and agent Mr. Swallow, provided false  
24 or misleading information to the City of San Jose as set forth in paragraph 46(a)  
25 of the Accusation and Statement of Issues. This violated San Jose's gambling  
26 ordinance, as well as Business and Professions Code section 19923.

27 c. As an owner licensee, Garden City was responsible for the employment and  
28 maintenance of suitable methods of operation pursuant to Business and

1 Professions Code section 19920. As mitigated by the facts set forth in paragraph  
2 11 above, through its officers, directors, and agents, Garden City allowed, used,  
3 and tolerated the practices admitted in paragraph 10 (with the exception of  
4 subparagraph 10p) above and paragraphs 13 and 14 below, including, among  
5 other things, undocumented transactions and payments, payments and  
6 distributions to unlicensed persons or entities, Comerica Bank's unapproved  
7 security interests in the Garden City stock and assets, and having an interest in  
8 funds wagered, lost, or won by Team View Player Services from August 2012  
9 until the contract's termination as described in subparagraph 10q above.

- 10 d. Garden City made payments to the Related Companies, which were not licensed,  
11 and indirectly to the Swallow Trust and Deborah Swallow, who also were not  
12 licensed. In connection with Respondents' initial license application, Deborah  
13 Swallow signed and had submitted a form declaring that she (1) was not directly  
14 or indirectly involved in Garden City's management decisions, (2) did not  
15 possess the authority to influence Garden City's decision-making, or (3) did not  
16 engage in any conduct that required a license, permit or registration.
- 17 e. Garden City engaged in, and aided, patterns and practices that demonstrate a  
18 disregard for prudent and usual business controls and oversight. Those patterns  
19 and practices included financial dealings involving millions of dollars that were  
20 not documented. Such undocumented transactions include, among others,  
21 paying or receiving consulting fees without written consulting agreements,  
22 paying rents without leases, receiving equity contributions without related  
23 written agreements, paying out millions of dollars without invoices, and  
24 engaging in certain transactions with parties related to its shareholders that in  
25 some instances were at unfair and inflated prices.
- 26  
27  
28



1           13. Subject to the mitigating facts set forth in paragraph 11 above, Mr. Lunardi  
2 admits to the following violations alleged in the Accusation and Statement of Issues:

- 3           a. As an owner licensee, Mr. Lunardi was responsible for the employment and  
4 maintenance of suitable methods of operation pursuant to Business and  
5 Professions Code section 19920. He allowed, used, and tolerated the practices  
6 admitted in paragraphs 10 (with the exception of subparagraph 10p) and 12  
7 above, including, among other things, undocumented transactions and payments,  
8 payments and distributions to unlicensed persons or entities, failing to obtain  
9 preapproval for Comerica Bank's security interests in the Garden City stock and  
10 assets, and having an interest in funds wagered, lost, or won by Team View  
11 Player Services from August 2012 until the contract's termination as described  
12 in subparagraph 10q above.
- 13           b. As a beneficiary of the Lunardi Trust and Potere's sole member, Mr. Lunardi  
14 benefited from Garden City's direct or indirect interest in funds wagered, lost, or  
15 won by Team View Player Services from August 2012 until the contract's  
16 termination as described in subparagraph 10q above. Business and Professions  
17 Code section 19984, subdivision (a) prohibits the receipt of such payments.
- 18           c. Mr. Lunardi assisted, and knew of, payments made to the Related Companies,  
19 which were not licensed, and indirectly to the Swallow Trust and Deborah  
20 Swallow, who also were not licensed. Mr. Lunardi did not contest Deborah  
21 Swallow's potential ownership interest (if any) in, and potential for co-  
22 management of, Garden City.
- 23           d. Mr. Lunardi, directly or through agents, engaged in, aided, or accepted the  
24 benefits of patterns and practices that demonstrate a disregard for prudent and  
25 usual business controls and oversight. Those patterns and practices included  
26 financial dealings involving millions of dollars that were not documented. Such  
27 undocumented transactions include, paying consulting fees without written  
28 consulting agreements, paying rents without leases, making equity contributions

1 without related written agreements, advancing or providing monies for the  
2 benefit of affiliates without notes or similar written agreements, paying out  
3 millions of dollars without invoices, and engaging in certain transactions with  
4 related parties that in some instances were at unfair and inflated prices.

5 14. Subject to the mitigating facts set forth in paragraph 11 above, Mrs. Lunardi  
6 admits to the following violations alleged in the Accusation and Statement of Issues:

- 7 a. As an owner licensee, Mrs. Lunardi was responsible for the employment and  
8 maintenance of suitable methods of operation pursuant to Business and  
9 Professions Code section 19920. She relied upon Mr. Lunardi and Mr. Swallow  
10 to control Garden City. They in turn allowed, used, and tolerated the practices  
11 admitted in paragraphs 10 (with the exception of subparagraph 10p) and 12  
12 above.
- 13 b. As a beneficiary of the Lunardi Trust, Mrs. Lunardi benefited from Garden  
14 City's direct or indirect interest in funds wagered, lost, or won by Team View  
15 Player Services from August 2012 until the contract's termination as described  
16 in subparagraph 10q above. Business and Professions Code section 19984,  
17 subdivision (a) prohibits the receipt of such payments.
- 18 c. Mrs. Lunardi, directly or through agents, accepted the benefits of patterns and  
19 practices that demonstrate an indirect disregard for prudent and usual business  
20 controls and oversight admitted in paragraphs 10 (with the exception of  
21 subparagraph 10p) and 12 above.

22 15. The Lunardi Trust admits to the violations alleged in the Accusation and  
23 Statement of Issues that were admitted to by Mr. Lunardi in paragraph 13 and Mrs. Lunardi in  
24 paragraph 14.

25 16. The admissions made by Respondents herein are only for the purposes of this  
26 proceeding, or any other related proceedings in which the Bureau or the Commission is  
27 involved or that involve licensed gambling activities. The admissions made by Respondents  
28 herein shall not be admissible in any criminal or civil proceeding.

**STIPULATED AGREEMENT OF SETTLEMENT**

17. Respondents, jointly and severally, agree to pay the Bureau a fine in the amount of \$1.5 million (Fine) for the acts and omissions and violations admitted to in paragraphs 10 through 15 above. The Fine shall be allocated among Respondents as follows: \$1.25 million to Garden City; \$250,000 to Mr. Lunardi; and \$0 to Mrs. Lunardi. Respondents understand and agree that a default in paying the full amount of the Fine in a timely manner shall constitute a sufficient basis, in and of itself, to revoke their state gambling licenses.

18. Respondents, jointly and severally, also agree to pay the Bureau the sum of \$275,000 (Cost Recovery) as reasonable costs of investigation and prosecution of this matter as provided for in Business and Professions Code section 19930. Respondents understand and agree that a default in paying the full amount of the Cost Recovery in a timely manner shall constitute a sufficient basis, in and of itself, to revoke their state gambling licenses.

19. Respondents shall pay the Fine and Cost Recovery on or before the 30th day after the date the Commission adopts this Stipulated Settlement.

20. On or before the 15th day after the Commission adopts this Stipulated Settlement, Garden City and Airport Parkway, or its successor in interest, shall seek approval from the managing member or other authorized agent of Airport Parkway to enter into a new lease for 1887 Matrix Boulevard. The lease shall provide for \$525,000 monthly rent to be adjusted annually in accordance with a commercially acceptable index. The lease shall contain commercially acceptable provisions. Should the managing member, or his or its successor or other authorized person, of Airport Parkway refuse to enter into a new lease on these terms, Respondent shall have no further obligation under this paragraph.

21. Within 15 days following the end of each month for 24 months following the month the Commission adopts this Stipulated Settlement, Garden City shall submit monthly unaudited financial reports to the Bureau. The financial reports shall include monthly profit and loss statements, statements of cash flows, balance sheets, gross revenue by game (identified by game name and CEGA number), payments to licensors for licensed games (identified by licensor, game name, and CEGA number), and a listing of any payment or distribution greater

1 than \$2,500 (identified by payee and services provided).

2 22. If it has not yet done so and except for a lease with Garden City, on or before the  
3 15th day after the date the Commission adopts this Stipulated Settlement, Garden City shall  
4 terminate all agreements with the Related Companies and any other person or entity affiliated  
5 with or controlled by any Respondent. Except as provided in this Stipulated Settlement, Garden  
6 City shall not enter into any agreement or arrangement, directly or indirectly, with any person  
7 or entity affiliated with or controlled by any Respondent without the Bureau's prior review, and,  
8 if deemed necessary, the Commission's prior approval.

9 23. Garden City shall continue to engage the independent accounting firm presently  
10 approved by the Bureau pursuant to the AEO's terms. That independent accounting firm shall  
11 provide audited financial statements for the periods ending December 31, 2015, and December  
12 31, 2016.

13 24. During the 18 months following the month the Commission adopts this  
14 Stipulated Settlement, Garden City shall engage a gaming operations expert for at least three  
15 days each quarter to review Garden City's operations and procedures and provide employee  
16 education.

17 25. During the 24 months following the month the Commission adopts this  
18 Stipulated Settlement, Garden City shall employ a general manager, who is experienced in the  
19 California card room or gambling industry and is properly licensed in all respects.

20 26. During the 24 months following the month the Commission adopts this  
21 Stipulated Settlement, Garden City shall employ a financial officer or controller, who is  
22 experienced in the California card room or gambling industry and is properly licensed in all  
23 respects.

24 27. During the 24 months following the month the Commission adopts this  
25 Stipulated Settlement, the Lunardis and the Lunardi Trust shall comply in all material respects  
26 with all provisions of the Act, the regulations adopted pursuant to the Act, the California Penal  
27 Code, and San Jose city ordinances relating to controlled gambling.  
28

1           28.     During the 24 months following the month the Commission adopts this  
2     Stipulated Settlement, Garden City shall bear all costs relating to its compliance with the terms  
3     set forth in paragraphs 17 through 27 above. Additionally, Garden City shall reimburse the  
4     Bureau semi-annually for the Bureau's costs and expenses of monitoring compliance with this  
5     Stipulated Settlement. The reimbursement rate shall be \$175 per hour plus actual costs  
6     incurred. The Bureau will bill Garden City on June 30 and December 31; Garden City shall pay  
7     the bill in full within 15 days.

8           29.     Until the Accusation and Statement of Issues is resolved by Commission or court  
9     order, Garden City shall comply with the AEO, as it relates to payments to Mr. Swallow,  
10    Deborah Swallow, the Related Companies, the Swallow Trust, or any person or entity affiliated  
11    with or controlled by Mr. Swallow. In its monthly reports to the Bureau, Garden City shall  
12    report any payment to Mr. Swallow, Deborah Swallow, or any person or entity affiliated with or  
13    controlled by them.

14          30.     Respondents agree that it shall be a default under this Stipulated Settlement to  
15    (a) fail to pay the Fine or the Cost Recovery when due or (b) fail otherwise to comply with any  
16    term of this Stipulated Settlement.

17          31.     Respondents agree that upon a default, any state gambling license issued by the  
18    Commission to them shall be deemed to be revoked automatically and immediately and shall be  
19    of no further effect. Each Respondent expressly waives any right to hearing with respect to, or  
20    arising out of, any license revocation based upon a default in paying the Fine, the Cost  
21    Recovery, or based upon the allegations of the Accusation and Statement of Issues that are  
22    admitted to in paragraphs 10 through 15 above. The parties understand and acknowledge that  
23    Respondents may request a hearing as to any other basis for default.

24          32.     The parties agree that in light of Respondents' admissions as noted in paragraphs  
25    10 through 15 above, and Respondents' acceptance of the penalties for that behavior,  
26    Complainant concludes that Respondents are suitable for licensure and each Respondent's  
27    application should now be approved, and state gambling licenses renewed.

1           33. The parties agree that this Stipulated Settlement fully resolves their dispute  
2 concerning the Accusation and Statement of Issues, and that, except upon default, no further  
3 discipline, including revocation, suspension, or denial shall be sought against Respondents'  
4 licenses based solely upon the allegations contained within the Accusation and Statement of  
5 Issues and admitted in paragraphs 10 through 15 above.

6           34. This Stipulated Settlement shall be subject to adoption by the Commission. The  
7 parties agree that neither they nor their counsel will communicate directly with the Commission  
8 regarding this Stipulated Settlement without notice to, or participation by, all parties or their  
9 counsel. The parties further agree that, because the Accusation and Statement of Issues remains  
10 pending against Mr. Swallow, any communications with the Commission will be limited only to  
11 this Stipulated Settlement.

12           35. By signing this Stipulated Settlement, each Respondent understands and agrees  
13 that it or he may not withdraw its or his agreement or seek to rescind the Stipulated Settlement  
14 prior to the time the Commission considers and acts upon it. If the Commission fails to adopt  
15 this Stipulated Settlement as its decision, this Stipulated Settlement shall be of no force or  
16 effect, and, except for actions taken pursuant to this paragraph and paragraph 34 above, it shall  
17 be inadmissible in any legal action between the parties. The Commission's consideration of  
18 this Stipulated Settlement shall not disqualify it from any further action regarding Respondents'  
19 licensure, including, but not limited to, disposition of the Accusation and Statement of Issues by  
20 a decision and order following a hearing on the merits.

21           36. The parties agree that a photocopy, facsimile, or electronic copy of this Stipulated  
22 Settlement, including copies with signatures thereon, shall have the same force and effect as an  
23 original.

24           37. In consideration of the above admissions and stipulations, the parties agree that  
25 without further notice or formal proceeding, the Commission may issue and enter an order  
26 consistent herewith and adopting this Stipulated Settlement.  
27  
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Dated: March 30, 2015

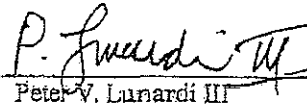
By P. Lunardi III  
Peter V. Lunardi III  
Its President  
Respondent



1                    ACCEPTANCE (THE LUNARDIS AND THE LUNARDI TRUST)

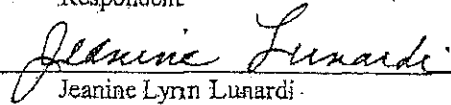
2                    Mr. Lunardi and Mrs. Lunardi, individually and on behalf of the Lunardi Trust, each has  
3                    carefully read and considered the above Stipulated Settlement. Each has discussed its terms and  
4                    effects with legal counsel. Each understands that, even though \$1.25 million of the Fine has  
5                    been allocated to and the entire Cost Recovery assessed against Garden City, he or she will be  
6                    obligated, jointly and severally with Garden City, to pay the Bureau a sum of \$1,775,000 (\$1.5  
7                    million in Fines and \$275,000.00 in Cost Recovery), and that the failure to pay any portion of  
8                    that amount when due could result in the revocation of my state gambling license. Each of us  
9                    further understands that he or she will be required to comply with other conditions set forth in  
10                    the Stipulated Settlement, and that the failure to comply with those conditions could result in  
11                    the revocation of Garden City's state gambling license. Mr. Lunardi and Mrs. Lunardi,  
12                    individually and on behalf of the Lunardi Trust, enter into this Stipulated Settlement  
13                    voluntarily, knowingly and intelligently, and agree to be bound by its terms.

14                    Dated: March 30, 2015

  
Peter V. Lunardi III

Respondent

16                    Dated: March 30, 2015

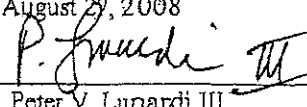
  
Jeanine Lynn Lunardi

Respondent

19                    Dated: March 30, 2015

The Lunardi Family Living Trust,  
Dated August 29, 2008

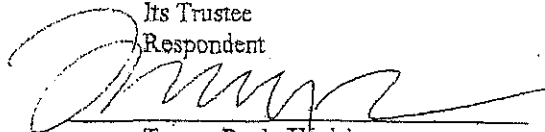
21                    By

  
Peter V. Lunardi III

Its Trustee

Respondent

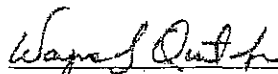
24                    Dated: March 30, 2015



Tracey Buck-Walsh  
Law Offices of Tracey Buck-Walsh  
Attorney for the Lunardis

COMPLAINANT'S ACCEPTANCE


Dated: March <sup>31</sup>27, 2015

  
WAYNE J. QUINT, JR., Chief  
Bureau of Gambling Control  
California Department of Justice

The foregoing Stipulated Settlement is hereby respectfully submitted for consideration by  
the California Gambling Control Commission.

Dated: March 30, 2015

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

  
WILLIAM P. TORNGREN  
Deputy Attorney General  
*Attorneys for the Complainant*

1  
2 **DECISION AND ORDER OF THE COMMISSION**

3 The California Gambling Control Commission hereby adopts the foregoing Stipulated  
4 Settlement of the Complainant, on the one hand, and respondents Garden City, Inc., doing  
5 business as Casino M8trix, Peter V. Lunardi III, Jeanine Lynn Lunardi, and the Lunardi Family  
6 Living Trust, dated August 27, 2008, on the other, for the case of *In the Matter of the*  
7 *Accusation and Statement of Issues Against: Garden City, Inc., doing business as Casino*  
8 *M8trix, et al.*, OAH No. 2014-60129, as its final Decision and Order in this matter to be  
9 effective upon execution below by its members.

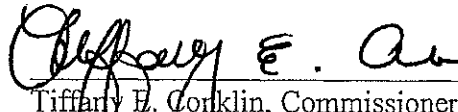
10 Accordingly, also effective upon execution below by the Commission members, the  
11 California Gambling Control Commission renews for a two-year term the state gambling  
12 licenses of Garden City, Inc., doing business as Casino M8trix (GEGE-000410), Peter V.  
13 Lunardi III (GEOW-001331), Jeanine Lynn Lunardi (GEOW-003119), and the Lunardi Family  
14 Living Trust, dated August 27, 2008 (GEOW-003259) subject to the terms and conditions of the  
15 foregoing Stipulated Settlement.

16 **IT IS SO ORDERED**

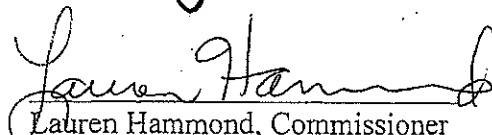
17  
18 Dated: \_\_\_\_\_

Richard J. Lopes, Chairperson

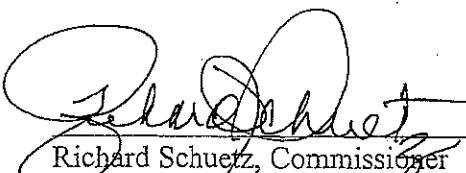
19  
20  
21 Dated: May 14, 2015

  
Tiffany E. Conklin, Commissioner

22  
23  
24 Dated: 5-14-2015

  
Lauren Hammond, Commissioner

25  
26  
27 Dated: May 14, 2015

  
Richard Schuetz, Commissioner

## **EXHIBIT 3**

BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GARDEN CITY INC., JEANINE  
LUNARDI, PETER LUNARDI, III, THE  
LUNARDI FAMILY LIVING TRUST, and  
ERIC G. SWALLOW,

Respondents.

Case No. HQ2014-00001AL

OAH No. 2014060129

CALIFORNIA GAMBLING  
CONTROL COMMISSION

2015 DEC 14 AM 9:28

**PROPOSED DECISION**

Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on August 10 through 13, and 17 through 19, 2015.

Deputy Attorney General William P. Tornngren represented Complainant Wayne J. Quint, Jr., Chief, California Department of Justice, Bureau of Gambling Control.

Allen Ruby, Attorney at Law, and William J. Casey, Attorney at Law, Skadden, Arps, Meagher & Flom LLP, represented Respondent Eric G. Swallow.<sup>1</sup>

The record was left open for the receipt of closing briefs, which were timely received and marked for identification as follows: Complainant's Closing Brief, Exhibit 57, Respondent's Closing Brief, Exhibit HL, and Complainant's Reply Brief, Exhibit 58.

The record closed on October 9, 2015.

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<sup>1</sup> The matter proceeded only against Respondent Eric G. Swallow because a settlement was reached between the California Gambling Control Commission (Commission) and the other Respondents: Garden City, Inc., Jeanine Lunardi, Peter Lunardi III, and The Lunardi Family Living Trust.

## FACTUAL FINDINGS

1. This action was brought by Complainant Wayne J. Quint, Jr., solely in his official capacity as Chief, California Department of Justice, Bureau of Gambling Control (Bureau).

2. The operative pleading is the First Amended Accusation and Statement of Issues filed July 22, 2015, subsequent to the settlement of the matter as regards all parties except Respondent Eric G. Swallow (Respondent). In sum, it alleges that Respondent is unsuitable for continued licensure under the California Gambling Control Act (GCA),<sup>2</sup> and seeks to revoke or suspend and prevent the renewal of his license, and to fine Respondent.

### *Background*

3. Business and Professions Code<sup>3</sup> section 19801, subdivision (i), provides:

All gambling operations, all persons having a significant involvement in gambling operations, all establishments where gambling is conducted, and all manufacturers, sellers, and distributors of gambling equipment must be licensed and regulated . . . .

The GCA grants the Commission the authority to decide when and to whom to issue all types of licenses under the GCA. The Bureau is the enforcement wing of the Commission. Among other duties, the Bureau conducts background checks and other forms of investigations and recommends to the Commission whether a license should be issued, renewed, or revoked.

4. The GCA sets out the qualifications for licensure. Section 19857, subdivisions (a) and (b), requires licensees be "of good character, honesty and integrity" and be people

whose prior activities, criminal record, . . . reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices . . . in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

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<sup>2</sup> Business and Professions Code section 19800 et seq., and California Code of Regulations, title 11, section 2000 et seq.

<sup>3</sup> All section references are to the Business and Professions Code, unless stated otherwise.

5. Garden City, Inc., is a licensed gambling enterprise, holding California state gambling license number GEGE-000410. Garden City now does business as Casino M8trix, a 49-table card room located at 1887 Matrix Boulevard in San Jose. Garden City is owned equally by the Lunardi Family Trust and Respondent. All entities and persons who hold ownership interests in gambling enterprises are required to be licensed; in Garden City's case the owners are licensed as shareholder owners, and endorsed as such on Garden City's license. The Lunardi Family Trust holds license number GEOW-003259, Peter V. Lunardi III holds license number GEOW-001331, Jeanine Lynn Lunardi holds license number GEOW-003119, and Respondent holds license number GEOW-001330.

6. Respondent's license was first issued in 2007 and was regularly renewed. Gambling licenses such as those held by Respondent are valid for two years. If renewal is desired, the licensee must apply 120 days prior to the expiration date. Respondent's license was scheduled to expire on May 31, 2014, and he filed a renewal application with the Commission on September 16, 2013.

7. The Bureau undertook a background check investigation regarding Respondent's 2013 renewal application. In the meantime, it had been investigating Respondent as regards another application he filed for licensure in connection with Hollywood Park/LAX, an establishment in southern California. In a letter to Respondent's agent Bob Lytle dated July 16, 2013 (July 2013 request), the Bureau requested "additional clarifying information and/or documentation . . ." The letter contains 100 questions and/or requests for information and requires a response not later than August 7, 2013. It also states that no extension of time to respond will be granted. Respondent submitted answers and supporting documentation within the time frame required. The submission contains 589 pages.

8. The Bureau found reason to question Respondent's suitability for licensure. In late 2013 or early 2014 the Bureau recommended denial of the renewal application. In addition, it sent the Commission an Accusation it recommended be filed against Respondent, alleging grounds to revoke his license. Following a meeting on May 29, 2014, the Commission decided to proceed with the Accusation; not to take action to renew Respondent's license, and referred the matter to the Office of Administrative Hearings. (Respondent has since withdrawn his application for licensure for Hollywood Park/LAX). Assistant Bureau Chief Stacy Luna Baxter described Respondent's license as having been "stayed" by the Commission. She explained that "stayed" meant that his license was "frozen in time," until it was decided to revoke it or that it could be renewed. Until that time, Respondent's license would not expire and would remain active and valid. When the action was over, it would be either revoked effective May 31, 2014, or renewed as of that date.

9. Complainant filed and served a combined Statement of Issues (regarding the renewal application) and Accusation. Respondent filed a Notice of Defense and this hearing followed.



10. The burden of proof is with the complainant in a proceeding on an accusation, and with the respondent in a statement of issues. The Bureau stipulated, however, that it would bear the burden of proof as to both the accusation and the statement of issues. The standard of proof is preponderance of the evidence. (Cal. Code Regs., tit. 4, § 12554, subd. (c).)

*Credibility determinations*

11. In evidence (admitted as hearsay) is a declaration signed by Bryan Roberts, a former employee of Garden City who resides in Texas, on July 9, 2015. The reliability of the declaration for any purpose was seriously undermined by the methods used to acquire it. Roberts was an independent contractor who was paid \$12,000 per month for information technology-related services. Roberts's contract was terminated in approximately August 2014. At that time, Garden City owed him approximately \$18,000.

The Bureau desired to interview Roberts, who was experiencing serious financial difficulties and was desperate to be paid. An Emergency Order was in effect at the time regarding certain of Garden City's operations that included placement of a consultant with financial authority and oversight instructions. The Bureau directed the consultant and Lunardi not to pay Roberts until he submitted to an interview. Peter Lunardi paid Roberts's travel costs to California and was not reimbursed by the Bureau. Roberts was interviewed in San Jose by Bureau representatives, and other interested parties were present. The tape-recorded statement was reduced to writing, and Roberts signed the statement. He was then paid the money he was owed.

Roberts's statement was essentially purchased by the Bureau with Lunardi's assistance. The evidence established that Roberts was not paid monies owed him for over one year and told he would not be paid unless and until he submitted to an interview. The declaration statements that resulted were thus accorded no weight in making the factual findings herein.

12. Lunardi's testimony was accorded less weight because of his self-interest in the proceedings. Lunardi testified that he was interested in what would become of Respondent's share of the money earned by Garden City since the emergency order was issued. Lunardi settled his case with the Commission, and withdrew \$7.1 million from Garden City. He testified that he asked Bureau representatives what would become of Respondent's share if Respondent lost his license, and was advised that this was "to be determined." Lunardi is interested in receiving these funds. In addition, the credibility of his testimony was negatively affected by evasive and disingenuous answers.

*Respondent's relationship to Garden City and creation of affiliated companies*

13. Garden City operated a card room in San Jose. In 1998, Garden City entered bankruptcy, and operated under a court appointed trustee beginning in 2000. In 2007, Respondent and Peter and Jeanine Lunardi (collectively, the Lunardis; Lunardi refers to Peter

Lunardi) purchased it for approximately \$22 million, with financing provided by Comerica Bank. Respondent owns 50 percent of the stock, and the Lunardi Trust owns 50 percent. Peter Lunardi has always been President, and the Board of Directors is comprised of Peter and Jeanine Lunardi and Respondent.

14. Respondent and the Lunardis commenced operating the card room on March 1, 2007, and made many changes in the operation. In the year ending June 30, 2007, Garden City showed a loss of \$2.6 million; in the six months ending December 31, 2008, it showed a profit of \$9.7 million. During the same time frames, gaming revenue increased from \$37 million to approximately \$49 million.

15. Jerome Bellotti is a certified public accountant and he began working as an accountant for Respondent, the Lunardis, and Garden City, in 2007. (In late 2014, he stopped providing accounting services to Garden City.) In 2008, Respondent and Lunardi met with Bellotti to discuss ways to minimize their tax liability. Bellotti understood that there was intellectual property involved, including software and games, that had led to the gross revenues. Bellotti recalls that, at the time, both families were considering moving to Nevada, which has no personal income tax. Lunardi attests that it was only Respondent who was considering a move.

In any event, it was decided to establish limited liability companies in Nevada that would receive payments from Garden City pursuant to software licenses or royalty agreements. The payments would be "a way to get money out to the owners through services rendered"; they were not intended to be distributions of earnings. Bellotti defines a distribution as a payment to stockholder of current or prior earnings. His understanding was that the software was designed by Respondent and the games were designed by the Lunardis and Respondent.

16. The affiliated entities were formed in late 2008. Profitable Casino, LLC, was solely owned by Respondent, and was intended to receive payments for licenses for casino operating software. Potere, LLC, was solely owned by Lunardi, and was intended to receive payments for consulting services provided by Lunardi. Dolchee, LLC, was originally owned jointly by the Lunardi Trust and the Swallow Trust, and would receive payments for gaming royalties. In 2011, the Swallow Trust's share was transferred to Respondent as an individual. The fees were income to the entities, and taxable.

17. Each of the three entities contracted with Garden City to receive \$400,000 or more per month, ostensibly for services rendered. The amounts received were as follows:

<u>Year</u>	<u>Dolchee</u>	<u>Profitable Casino</u>	<u>Potere</u>
2009	\$7,880,000	\$5,000,000	\$5,000,000
2010	\$7,182,000	\$2,775,000	\$2,775,000
2011	\$11,400,000	\$2,850,000	\$2,850,000
2012	\$11,900,000	\$3,325,000	\$3,325,000

The amounts paid to the three entities were not dependent upon invoices or other documentation; they were based on available cash flow. The amounts paid were decided upon by Respondent and Lunardi, following a discussion of how much money they thought should be taken out of Garden City and given to them. None of the three entities has ever applied for or held a state gaming license.

18. Garden City and the three entities have been subject to tax audits. The Internal Revenue Service (IRS) audited Garden City's 2009 return, including payments from Garden City to the related entities. The IRS also audited Dolchee's 2011 return. The California Franchise Tax Board (FTB) audited the 2009 and 2010 tax returns of Respondent and Deborah Swallow. Following each audit, the IRS and FTB issued "no change" letters, indicating that no errors were found and that no changes to the returns needed to be made.

19. Two additional companies were created by Respondent and the Lunardis in connection with their operation of Garden City and the move to its current location. Airport Opportunity Fund, LLC, was originally owned by the Lunardi Trust and the Swallow Trust. In 2011, Respondent as an individual replaced the Swallow Trust. Airport Parkway Two, LLC, is solely owned by Airport Opportunity Fund.

Airport Parkway purchased the land at 1887 Matrix Boulevard in San Jose, where Casino M8trix now operates. Dolchee, Potere, and Profitable Casino contributed a total of \$2,050,000 towards the purchase. Comerica Bank provided construction loans, and Garden City guaranteed the loans. Garden City leases the property from Airport Parkway.

#### *Causes for denial/discipline*

20. Complainant alleges five causes to discipline Respondent's license and to deny license renewal. In general, the allegations allege facts to support the argument that Respondent is not a person of good character, honesty, and integrity, and that his prior activities and business practices pose a threat to the effective regulation of controlled gambling.

*First cause: prohibited interest in the funds wagered, lost or won by a third-party provider*

#### PARAGRAPH 45

21. Pursuant to section 19984, a licensed gambling establishment may contract with a third party to provide proposition player services (TPPPS). TPPPS businesses provide services to the gambling establishment, including playing as a participant in any controlled game that has a rotating player-dealer position. The contract must be approved in advance by the Department of Justice (Department). The gambling establishment may not receive any interest, direct or indirect, in any funds wagered, lost, or won.

22. Garden City contracted with Team View Player Services LLC (TV Services) to provide TPPPS to Garden City. TV Services, owned by Timothy Gustin, paid Garden City pursuant to the contract. Team View Player Associates LLC (TV Associates) is another company owned by Gustin and had no assets other than its contracts with TV Services. In 2010, 2011 and 2012, TV Services paid TV Associates approximately \$4.8 million. TV Associates paid approximately \$3.6 million to Secure Stone LLC, a Delaware company. Respondent's wife, Deborah Swallow, is the sole member of Secure Stone. Thus, monies earned by TV Services pursuant to its contract with Garden City – monies earned by a third-party provider – went to Secure Stone.

23. As Deborah Swallow's husband, Respondent had a community property interest in Secure Stone. In addition, the record is replete with credible evidence that Secure Stone was operated and controlled by Respondent, including his testimony that he considered it his company.

24. The evidence established that Respondent, indirectly and/or directly, received an interest in funds from a TPPPS company by virtue of Secure Stone's receipt of funds from TV Services through payments from TV Associates. There were three payments in 2011 and five payments in 2012, for a total of eight payments.

25. Paragraph 45 was proven.

*Second cause: providing false or misleading information to the Bureau*

PARAGRAPH 46(a): MISREPRESENTATION ABOUT THE EXISTENCE OF A WRITTEN ACCOUNTANT'S VALUATION OPINION

26. Complainant alleges that Respondent supplied false or misleading information to the Commission regarding the existence of a written accountant's opinion, based upon his testimony at a Commission meeting.

27. On February 21, 2013, Respondent appeared before the Commission in relation to his application for licenses for LAX and Hollywood Park. The focus of the Commission at that time appeared to be on the status of the over 600 employees, and there was extensive questioning about whether they would be hired by Respondent should he be licensed as the new operator. He was also asked some detailed questions about his finances and Garden City matters.

At the time, Respondent was residing in Nevada. Commissioner Schuetz noted that Profitable Casinos was wholly owned by Respondent, that it was a Nevada LLC, and that Garden City (referred to as Matrix in the transcript) paid Profitable pursuant to a licensing agreement. He asked Respondent what Profitable does, and Respondent replied that it is a software firm that he developed that helps operate Garden City and that he planned would also help operate LAX. Commissioner Schuetz asked how the values were obtained that formed the basis for the payments by Garden City to the affiliated companies. He appeared

to be concerned that profits from Garden City were flowing to a Nevada company owned by Respondent, thus avoiding the payment of California taxes. The following is the relevant exchange:

Commissioner Schuetz (CS): So how did you come up with the value that you pay yourself?

Respondent (R): My CPA firm did that for me.

CS: And do you have a written opinion to that, or a written opinion with regards to ---

R: Yes. Yes.

CS: And is it a qualified or an unqualified opinion?

R: It is a CPA qualified opinion.

CS: It's a qualified opinion. So he had absolutely no reason to question that decision.

R: I'm sorry ---

CS: That's what a qualified opinion is. Is it qualified or unqualified?

R: You know, I don't know how to answer that. I'm not qualified to answer that today.

CS: Well, if it's qualified, that means, yeah, I agree, but I've got some issues and he's going to write what those issues are on that. Could you provide for sure, and our friends at the Bureau make sure that we get it, the accountant's qualified or unqualified opinion as to the pricing model that was used in this software license?

R: Sure.

28. It is unclear what Respondent was saying "yes, yes" in response to, as the Commissioner's question was either not finished or not fully transcribed. But it is clear from the rest of the exchange that Respondent either did not know what he was being asked or did not know the answer. He said he did not know the answer and that he was "not qualified to answer that today."

29. Respondent testified at hearing that he thought the question referred to sections of the audited financial statements that his accountant Jerry Bellotti prepared that concerned related-party payments. And those statements had already been provided to the Bureau. It is also noted that it would be very foolish to state that there existed a document that did not exist, knowing that the Commission would want to see the document. It does not make sense for Respondent to lie about the existence of a written accountant's valuation opinion.

30. Paragraph 46(a) was not proven.

PARAGRAPH 46(b): MISREPRESENTATIONS ABOUT HIS MARITAL STATUS

31. Complainant alleges that Respondent informed the Bureau that he was separated from his wife Deborah Swallow when he was not, and was thus untruthful about his marital status.

32. On January 18, 2012, Respondent filed an application with the Bureau stating he was married. On February 13, 2012, he signed an application for the City of San Jose stating he was married. In August 2012, he filed an application with the Bureau stating he was separated. A letter from his attorney dated July 10, 2013, states that he and Deborah Swallow had been separated "since approximately 2009." It also stated that they have not obtained a legal separation or begun formal divorce proceedings. In a response to the Bureau's July 2013 request for information (see Finding 7), Respondent wrote that he and his wife considered "themselves separated effective approximately January of 2010," but that there was "no formal, executed legal separation documents between [the couple] as of yet."

33. In October and December of 2013, both Deborah Swallow and Respondent filed documents in a dissolution proceeding in the Los Angeles County Superior Court that identify their separation date as October 8, 2013. No dissolution had been finalized as of the date of the hearing; they were still married.

34. The evidence was insufficient to establish that Respondent was untruthful in 2012 and 2013 about his marital status. A couple can be separated, and still married, and that was true for Respondent and his wife and remains true. It is the legal separation date that determines the characterization of property as community or separate. There is no evidence that Respondent advised the Bureau that he and his wife were legally separated when they were not; in fact, on one occasion, Respondent elaborated that there was not yet a legal separation. It is unclear what Respondent meant by his statement that the couple "considered themselves separated," but this statement does not rise to the level of a lie about his marital status. Couples who are struggling with their marriage often "separate" and get back together over the course of the marriage. Respondent testified consistently with this observation, stating that he and his wife lived in different portions of a large house for a time in 2010, that the separation was "on and off" over time, and that they needed to pick a separation date when they decided to divorce, and chose October 8, 2013.

35. Paragraph 46(b) was not proven.

PARAGRAPH 46(c): MISREPRESENTATIONS BY AN AGENT OF RESPONDENT THAT \$1.4 MILLION RECEIVED BY HIS WIFE FROM SECURE STONE RELATED TO THE SALE OF HER DENTAL PRACTICE

36. In November and December of 2012, Deven Kumar was the Chief Financial Officer (CFO) of Casino M8trix. David Carrillo was an Investigative Auditor with the Bureau. He wrote two letters of request to Bob Lytle, who was Respondent's designated agent. Lytle referred the letters to Kumar. Carillo sought information about the source of income on Deborah Swallow's 2011 federal income tax return. He noted that her Schedule E included \$1,443,082 from Secure Stone, LLC, as royalty income.

A memo authored by Carrillo dated September 10, 2013, to Carlos Soler, Senior Management Auditor, states that Kumar told him verbally that "the \$1.4 million of royalty income is from the sale of Deborah Swallow's dental practice called Secure Stone, LLC, incorporated under her name. Mrs. Swallow is a licensed dentist." It is undisputed that this assertion is untrue; Secure Stone did not receive the funds from the sale of a dental practice.

37. Carillo did not testify; he is retired and no longer works for the Bureau. His written statement is hearsay, offered for its truth. Robert Burge is a Senior Management Auditor. He testified that he reviewed the memo, and he thinks that he discussed it with Carillo. No witness testified that Kumar made the statement. Further, Kumar was subsequently interviewed, and denied making the statement. Although hearsay is admissible in administrative hearings, in order to support a factual finding, it must be corroborated by direct evidence. (Gov. Code, § 11513, subd. (d).) Accordingly, there is insufficient evidence to establish that Respondent's agent made a misrepresentation to the Bureau concerning the \$1.4 million royalty income.

38. Paragraph 46(c) was not proven.

PARAGRAPH 46(d): MISREPRESENTATION BY AN AGENT OF RESPONDENT THAT DEBORAH STONE HAD NO INTEREST IN CASINO M8TRIX AND THAT HER BUSINESS AFFAIRS WERE INDEPENDENT OF RESPONDENT'S

39. In a letter to the Bureau dated July 10, 2013, John H. Maloney, a Nevada attorney, stated that his office represented Respondent "in general gaming matters." He went on to state that the letter's purpose was "to provide additional background information regarding the relationship between [Respondent] and Dr. Swallow." In pertinent part, Maloney wrote

Please note that Dr. Swallow's business affairs are independent of [Respondent]. Dr. Swallow files separate tax returns, maintains her own bank accounts, and the money from her business ventures is her money. Likewise, [Respondent] files

his own tax returns, has his own bank accounts, and maintains his own businesses. Dr. Swallow has no interest in Casino M8trix or Hollywood Park Casino. With the exception of the fact that the two remain legally married, . . . .

40. Although Maloney's representations are modified to some extent by his statement that the couple is still legally married, his intention is clear. The goal of the letter is to inform and persuade the Bureau that their business affairs are separate. This was untrue. Although it is correct that they filed separate tax returns and owned separate bank accounts, Deborah Swallow did have specific interests – not solely general community property interests – in Garden City and related entities. These interests included a buy-sell agreement providing for Deborah Swallow to replace Respondent upon his death or incapacity and through property held by the Swallow Family Trust.

41. Maloney's intent was clear; he stated it. The intent was to persuade the Bureau that it was not necessary to look at Deborah Swallow's financial information because the couple's interests were separate, regardless of their marital status. Respondent testified that he was not aware of the letter until this litigation ensued, but did not deny that Maloney was his attorney. Respondent is therefore responsible for the misrepresentations.

42. Paragraph 46(d) was proven.

PARAGRAPH 46(e): RESPONDENT MISREPRESENTED THAT CERTAIN GAMES AND SOFTWARE LICENSED BY DOLCHEE AND PROFITABLE CASINO WERE CONFIDENTIAL AND PROPRIETARY AND HAD A COMBINED FAIR MARKET VALUE EXCEEDING \$90 MILLION.

43. Millions of dollars flowed from Garden City to Dolchee, an unlicensed entity, pursuant to an agreement for the provision of games. The heart of this allegation concerns Respondent's representation that Dolchee also owned gaming analytical software that was used to operate Garden City, which helped justify the large payments. Respondent was the only witness to testify that such software exists; his partner Lunardi, CFO Kumar, and accountant Bellotti were unaware of such software, and testified that the payments were for games. Despite the ease of producing actual proof of the software's existence, Respondent only provided a portion of a PowerPoint presentation he had written and his own vague testimony. It was not established that Dolchee provided gaming analytical software that was installed and utilized at Garden City.

44. Paragraph 46(e) was proven.

PARAGRAPH 46(f): RESPONDENT MISREPRESENTED THAT THE PAYMENTS MADE BY GARDEN CITY TO PROFITABLE CASINO WERE BASED UPON THE VALUE TO GARDEN CITY OF THE SOFTWARE PROVIDED BY PROFITABLE CASINO, WHEN THE PAYMENTS WERE IN REALITY DISTRIBUTIONS.



45. With the help of coder Bryan Roberts, Respondent created software focused on casino operations. The operating software was designed to keep Garden City running well. It provided information to the managers to help them make decisions, such as whether to send dealers home early, thereby reducing payroll costs. It also functioned as Garden City's HR program, and was installed in its current form in 2008. The software was owned by Respondent's company Profitable Casino, and leased to Garden City.

From 2010 to 2012, Garden City paid \$14 million to Profitable, characterized as royalties. The same amount was paid during the same period to Potere, Lunardi's company, characterized as consulting fees. Although the amount could vary, Respondent and Lunardi agreed that each of their entities would be paid \$400,000 per month, or \$4.8 million per year. They agreed that they were both working for the business and that they would each receive an equal amount even though the work they did might not be equal in any given month. There were no invoices prepared. The amount was determined by discussions between Respondent and Lunardi, and with Kumar.

46. It appears by the evidence presented that the payments made by Garden City to Profitable were based to some extent upon the value of the software.

47. Paragraph 46(f) was not proven.

PARAGRAPHS 46(g), (h) and (i): RESPONDENT SUBMITTED A REPORT TO THE BUREAU THAT CONTAINED FALSE AND MISLEADING INFORMATION.

48. On April 18, 2013, Respondent's application for a license to operate Hollywood Park /LAX was on the Commission's agenda. The Commission extended the temporary license, and added conditions for licensure. One of the conditions was that Respondent provide to the Bureau by August 31, 2013,

a valuation and analysis by an independent company of the commodities and/or services provided as it relates to the gaming license agreements between Garden City . . . and Dolce, LLC and software agreements with Profitable Casino, LLC. This analysis must be conducted by a CPA firm approved by the Bureau.

49. Respondent engaged the accounting firm of Grant Thornton, LLP to provide the valuation. Grant Thornton issued a report (GT report) on August 29, 2013. It states its understanding that Respondent

owner of Casino M8trix . . . will use our valuation for compliance purposes with the . . . Commission, specifically to provide a calculation of potential fair values of the Subject Intellectual Properties based on the information provided by the Company and [Respondent].

A draft report was prepared first, and Respondent was provided a copy. During a telephone meeting, Bureau staff expressed concerns about the accuracy of the draft report. Their concerns did not result in significant changes and the GT report was issued and provided to the Commission by Respondent.

50. The GT report estimates the fair market value of three entities as follows: Profitable Casino Software \$41,800,000; Dolchee gaming analytical software \$29,500,000 and Dolchee Games \$18,800,000. The total is \$90,100,000. The GT report identifies Respondent as providing the information on which it based its analysis and valuation, and this was confirmed by GT staff during a meeting concerning the draft report.

51. The GT Report provides a valuation of Dolchee gaming analytical software, based on information provided by Respondent. As stated in Finding 43, it was not established that Dolchee provided gaming analytical software that was installed and utilized at Garden City. Respondent gave false information to Grant Thornton, who calculated the value of the non-existent software and communicated that value through its report to the Commission.

52. The GT Report also contains incorrect information as concerns games provided by Dolchee to Garden City. It states that the games Casino M8trix licenses from Dolchee include: "Baccarat Gold™, DHP Gold™, Pai Gow Tiles™, Texas Hold'em Gold™ and Omaha Gold™, (collectively the 'Dolchee Games')." This list is incorrect. The only games that had been approved by the Bureau for play at Garden City at that time were Baccarat Gold, Double Hand Poker Bonus Gold, and variants of those games.

53. The GT Report also states

According to Management, Casino M8trix pays Shuffle Master, a third party games provider, an annual license fee of approximately \$44,400 to gain access to the Paigo Poker and UTH games, which are then turned over to Dolchee LLC for rebranding for Casino M8trix's use.

This statement is contradicted by Shuffle Master's licensing agreement, which does not allow modifications without written consent. In addition, if a Shuffle Master game was rebranded, the Bureau would have to approve it for play at Garden City, and there had been no request to do so, let alone an approval issued.

54. Respondent contends that he is not responsible for any errors in the GT Report, but this contention is not persuasive. Respondent was the source of a great deal of false information which Grant Thornton then used to produce a report containing significant errors and calculations of market value that lacked a factual basis. He knew the information they were using was faulty, but made no corrections and submitted the GT Report to the Commission.

55. Paragraphs 46(g), (h) and (i) were proven.

PARAGRAPH 46(j): FALSE INFORMATION TO THE BUREAU

56. Paragraph 46(j) states

In response to the Bureau's request that he provide copies of certain software agreements for LAX, [Respondent] responded, in part, "no payments have been made to Profitable Casino LLC for services provided to date." In truth, through Secure Stone and LAX, [Respondent] paid monies to Bryan Roberts for services provided for Hollywood Park.

This allegation is unclear. It does not appear that Complainant has addressed it in his closing brief.

57. Paragraph 46(j) was not proven.

PARAGRAPH 46(k): FALSE INFORMATION TO THE BUREAU RE DOLCHEE SOFTWARE

58. Respondent informed the Bureau that Bryan Roberts developed the Dolchee software. This was false; there was no Dolchee software.

59. Paragraph 46(k) was proven.

PARAGRAPH 46(l): FALSE INFORMATION TO THE BUREAU RE PURPOSE OF PAYMENTS TO BRYAN ROBERTS

60. Paragraph 46(l) states

In response to the Bureau's request that he "state the reason that Profitable Casino LLC made payments on a monthly basis," [Respondent] responded "Profitable Casino pays Bryan Roberts a fixed monthly development fee to maintain and upgrade software." In truth, Profitable Casino compensated Mr. Roberts for his work on software provided to Team View Players Services and another card room. Garden City made monthly payments to Mr. Roberts. Those payments were for him to service, update, troubleshoot, and work on and improve the software provided under Profitable Casino's contract with Garden City.

This allegation is unclear. Although Complainant appears to have addressed the claim in his closing brief, the argument therein is confusing.

61. Paragraph 46(l) was not proven.

PARAGRAPH 46(m): FALSE INFORMATION TO THE BUREAU RE NATURE OF AGREEMENTS WITH BRYAN ROBERTS

62. The Bureau requested Respondent provide complete contracts of all agreements between himself, Profitable Casino or any other affiliated entity, and Bryan Roberts, that were "in effect at any time between January 1, 2009, and the present." Respondent replied that Profitable Casino and Roberts entered into oral agreements. Complainant alleges that this was an untrue answer because they "entered into a Software Service Agreement, which created a profit-sharing arrangement between the two. [Respondent] failed to provide the Bureau with a copy of that agreement."

63. The agreement Complainant references was signed in June 2007 and was for 320 hours of work. The scope of work involved the installation, training, and set-up of supported software. The term was one year from the date on which the software was fully functional, with automatic renewals for maintenance services, with some conditions. Respondent testified that the software was fully installed in 2008; it would therefore have been in effect on January 1, 2009. Therefore, it was established that Respondent provided false information to the Bureau by his answer to this question.

64. Paragraph 46(m) was proven.

PARAGRAPH 46(n): FALSE INFORMATION TO THE BUREAU RE FAILURE TO LIST DOLCHEE AND AIRPORT FUND AS SWALLOW TRUST ASSETS

65. On a date not established in the record, the Bureau asked that Respondent provide a list of assets held by the Swallow Trust. A list was provided that did not include Dolchee and Airport Fund. The Swallow Trust held a 50 percent share in both entities.

66. Question 34 of the July 2013 request asks Respondent to

Please confirm that the only members of Airport Opportunity Fund LLC, are the Lunardi Family Living Trust . . . and the Swallow Family Living Trust . . . . If this is not correct please identify each of the members of the Airport Opportunity Fund LLC.

Respondent answered that the trusts were the only members, and that "both own a 50% interest."

67. It was therefore established that Respondent failed to include the two entities on a list provided to the Bureau, but he did identify Airport Fund as held by the trust in another disclosure.

68. Paragraph 46(n) was proven in part.

*Third cause: failure to provide information and documentation requested by the Chief*

69. Paragraphs 47 (a) through (f) concern Respondent's answers to the July 2013 request for information submitted in connection with his Hollywood Park/LAX application. Complainant alleges that Respondent failed to respond completely to the requests, including by failing to provide the documentation requested. Paragraphs 47 (g) through (i) concern matters discussed previously in the section regarding the Third Cause of Action. Complainant alleges that in each instance, Respondent failed to provide information and documentation requested.

PARAGRAPH 47(a)

70. Request No. 32 reads:

Please state whether the monies shown on the closing statement of January 20, 2010, as provided by Potere LLC, Profitable Casino LLC, and Dolchee LLC were loans, gifts, or investments or capital contributions. If the monies provided were anything other than gifts, please provide all documents evidencing or relation to the transactions.

71. Respondent replied:

The monies shown on the closing statement from Potere LLC, Dolchee LLC, & Profitable Casino LLC are individual draws from the owners used as equity down payment towards the purchase of the land by Airport Parkway Two LLC as attested by ownership.

72. The answer does not directly respond to the question, although it does describe to some extent the source of the funds. It does not indicate the funds were gifts, however, and no documentation was provided.

73. Paragraph 47(a) was proven.

ALLEGATION 47(b)

74. Request No. 30 reads:

For each loan, including loans made by commercial lenders, made in connection with the acquisition, construction, or improvement of the 1887 Matrix Boulevard project, please describe the collateral or security for the loan. If any collateral is personal property, please provide a copy of each security agreement and financing statement relating to the collateral.

75. Respondent replied:

Please see attachment #30 for loans provided by Comerica Bank for the Casino M8trix Project.

Attachment #30 contained certain loan documents from Comerica Bank. He did not provide, however, the security agreement or stock pledge agreement that existed in connection with the loan.

76. Paragraph 47(b) was proven.

PARAGRAPH 47(c)

77. Request No. 35 reads:

Were any loans entered into in connection with the acquisition, construction or improvement of the 1887 Matrix Boulevard project collateralized with or secured by any assets or property owned or held by Garden City, Inc.? If so, please provide copies of all documents relating to the loans including, by way of example and not limitation, all security agreements, financing statements, guaranties, and promissory notes entered into, provided, or made by Garden City, Inc.

78. Respondent replied: "Please see attachment #30 for all loan and collateralization of the project." As set forth in Finding 75, the loan documents provided by Respondent were incomplete. Respondent did not provide a copy of the security agreement that Garden City executed.

79. Paragraph 47(c) was proven.

PARAGRAPH 47(d)

80. Request No. 69 reads:

For each calendar year from January 1, 2009, through December 31, 2012, please identify each person, entity, or company who provided Garden City, Inc. with a licensed game. For each

person, entity, or company identified, please state (1) the name of the licensed game provided and GEGA<sup>4</sup> number, and (2) the total licensing fees paid or other payments made for the game for the year.

81. Respondent replied: "Please see attachment #69 for payment schedule and invoice/agreements from Betwiser, TXB Industries, and Shufflemaster." The information provided did not respond to the request. The GEGA numbers were not provided.

82. Paragraph 47(d) was proven.

PARAGRAPH 47(e)

83. Request No. 70 reads:

For each game licensed to Garden City, Inc. by Dolchee LLC, please state (1) the name of the game, (2) the GEGA number for the game, (3) the date on which it was approved by the State of California for play, (4) the date on which it was first played on the premises of Garden City, Inc., (5) the patent number, (6) the date on which a patent application was first made, and (7) the date on which a patent was issued.

84. Respondent replied: "Please see attachment #70 for patent issuance." The only information Respondent provided was the patent information for Baccarat Gold.

85. Paragraph 47(e) was proven.

PARAGRAPH 47(f)

86. Request no. 92 reads:

Please state the date, amount, payor, and recipient of each payment received, directly or indirectly, (1) by [Respondent] or any of his affiliates or immediate family (2) from any Third Party Provider of Proposition Player Services or any person or entity affiliated with a Third Party Provider of Proposition Player Services or any person or entity affiliated with a Third Party Provider of Proposition Player Services. For each payment, please state the reason for the payment and provide the agreement or invoice underlying the payment.

87. Respondent replied: "Please see attachment #92 for payments made."

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<sup>4</sup> GEGA is the acronym for gambling-established game approval number.

The attachment breaks out the amounts paid by Team View to Secure Stone/Deborah Swallow over a three-year span from 2011 to 2013. The total amount is \$1,442,839 million. No other information was provided.

88. Paragraph 47(f) was proven.

PARAGRAPH 47(g)

89. This allegation concerns the same facts as discussed in Findings 26 through 29: the representation by Respondent that he had a written accountant's opinion. The allegation states:

The Bureau requested [Respondent] to provide the written accountant's opinion that [Respondent] had represented to the Commission existed. Despite multiple requests, he did not provide the requested written opinion. Ultimately, [Respondent] advised that the written opinion did not exist as previously represented and, in effect, confirmed that he had provided false or misleading information to both the Bureau and the Commission.

90. It appears that Complainant alleged the failure to provide a document that does not exist.

91. Paragraph 47(g) was not proven.

PARAGRAPH 47(h)

92. This allegation concerns the same facts discussed in Findings 48 through 54: the submission of the GT Report to the Commission by Respondent. The allegation states:

The Bureau requested [Respondent] to provide an accountant's fair market determination of certain transactions with affiliates. The Bureau specifically requested a valuation based upon what a willing buyer or user would pay to a willing seller or vendor dealing at arms' length when neither was acting under compulsion to enter into the subject transactions. [Respondent] failed to provide the requested fair market valuation. Instead, as alleged in paragraph 46 above, he caused the GT Report, which is false and misleading, to be provided to the Bureau.

93. As stated in Finding 55, it was proven that the submission of the GT Report to the Commission constituted a false representation by Respondent. The same facts do not establish a failure to provide requested documentation.



94. Paragraph 47(h) was not proven.

PARAGRAPH 47(i)

95. This allegation concerns the same facts discussed in Findings 62 and 63: Respondent's false statement to the Bureau concerning his agreement with Bryan Roberts. Respondent's false answer that there were oral agreements, was also a failure to provide information. There was a written agreement that Respondent failed to produce.

96. Paragraph 47(i) was proven.

97. The short turn-around time of approximately three weeks is accepted as a factor mitigating Respondent's failure to provide complete responses to the requests. There were 100 requests and over 500 pages were supplied by Respondent. It is also noted that there was no evidence of a dialog between the Bureau and Respondent concerning answers that the Bureau did not feel were complete.

*Fourth cause: conduct demonstrating lack of qualification for licensure*

PARAGRAPH 48(a): PROVIDING FALSE OR MISLEADING INFORMATION TO THE CITY OF SAN JOSE

98. Licensure by the City of San Jose (City) is required for the operation of a card room in its jurisdiction. Complainant alleges that Respondent

repeatedly provided false or misleading information to the City of San Jose or impeded its licensing investigations. Among other things, [Respondent] led the City of San Jose's investigators to believe that he, not the Swallow Trust, was a member of Dolchee and Airport Fund.

99. Richard Teng is the Gaming Administrator for City. Teng hired Michael Conroy to investigate Respondent on City's behalf. Complainant contends that Respondent, or his agents, told Teng and Conroy that he and Lunardi were the owners of Dolchee, when the true owners were the Swallow Trust and Lunardi. It appears that Complainant asserts that this misrepresentation was made through a licensure application Respondent had submitted to City.

100. In 2012, Respondent completed and submitted an application to City for a Landowner License.<sup>5</sup> At question four, the application asks the applicant to list business entities in which the applicant or his or her spouse has held an ownership interest of five percent or more in the past five years. Respondent wrote "provided info on separate

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<sup>5</sup> A Landowner License is issued by City to a person or entity who holds title to the land on which a cardroom is built.

attachment." The attachment names Dolchee as a business interest. The ownership is listed as 50 percent each for Respondent and Lunardi. It also states that Respondent was "sole owner to Jan 2009 then Lunardi became 50 percent owner with no cash infusion."

The information in the application concerning Dolchee's ownership was correct. Dolchee was originally owned 50 percent each by the Lunardi Trust and the Swallow Trust. In 2011, however, ownership was changed from the Swallow Trust to Respondent.

101. It is further alleged that Respondent directed Roberts not to make full disclosures to City, gave him guidance on how to be evasive, and told him to make false statements. As set out in Finding 11, Roberts's declaration is accorded no evidentiary weight, and there was no non-hearsay evidence admitted in support. In addition, Respondent denied the allegations.

102. Paragraph 48(a) was not proven.

PARAGRAPH 48(b): PROVIDING FALSE OR MISLEADING INFORMATION TO THE COMMISSION

103. First, Complainant again alleges the same matters discussed in Findings 26 through 29. That allegation was not proven.

104. Second, Complainant alleges that Respondent, through Bellotti, made false statements concerning Garden City profits in 2008 and 2009, by stating that profits increased by \$13 million during that time period. The evidence to support this allegation was not identified or addressed in the closing brief.

105. Finally, Complainant alleges that Respondent

represented to the Commission that he had documents evidencing certain consulting services provided by Casino M8trix, Inc., to Dolchee, as well as a contract for payment of approximately \$6 million by Dolchee for those services. Despite his agreeing to do so, [Respondent] never provided such documents or contract . . . .

The evidence to support this allegation was not identified or addressed in the closing brief.

106. Complainant argues in his closing brief that at a Commission meeting on April 18, 2013, Respondent falsely stated that Dolchee owned a patented card game. This allegation is not contained in the Accusation.

107. Paragraph 48(b) was not proven.

PARAGRAPH 48(c): DISREGARD FOR PRUDENT BUSINESS PRACTICES

108. Complainant alleges that Respondent "engaged in patterns and practices that demonstrate a substantial disregard for prudent and usual business controls and oversight." The standard for "prudent and usual business" was not established.

109. Paragraph 48(c) was not proven.

PARAGRAPH 48(d): BENEFITTED FROM SAN JOSE MUNICIPAL CODE VIOLATIONS

110. Complainant alleged that Respondent "aided, facilitated, turned a blind eye to, or benefited from acts and omissions that violated San Jose Municipal Code, title 16." This allegation is vague, unclear, and was not addressed in Complainant's closing brief.

111. Paragraph 48(d) was not proven.

PARAGRAPH 48(e): BENEFITTED FROM UNLICENSED PLAY

112. This allegation repeats allegations previously made and discussed (Findings 21 through 24).

113. Paragraph 48(e) was not proven.

PARAGRAPH 48(f): REQUESTED ROBERTS TO CHANGE DATA

114. This allegation is vague and unclear.

115. Paragraph 48(f) was not proven.

*Fifth cause: disqualified for licensure*

PARAGRAPH 49: CONDUCT INIMICAL TO THE PUBLIC

116. The facts set forth in Findings 21 through 25, 39 through 44, 48 through 55, 58, 59, 62 through 88, 95, and 96 demonstrate that Respondent committed violations of the GCA, and conducted operations in a manner that was inimical to the public health, safety, and welfare.

117. Paragraph 49 was proven.

*Materiality*

118. The GCA requires full and true disclosure of business practices and business and personal finances. Accurate knowledge of these matters assists in the assessment of honesty and integrity, and of possible threats to the effective regulation of controlled gambling. The misrepresentations made and information not provided by Respondent

concern these relevant matters, and are thus material to the decision of whether he is suitable for licensure.

*Respondent's evidence*

119. Richard Delarosa has known Respondent since 2011. Delarosa now lives in Las Vegas, where he works in governmental relations and lobbying. He met Respondent when Lunardi and Respondent hired him to lobby on behalf of Garden City. For approximately three years, he worked to develop relationships with City Council members and key staff to further the goal of making the City an easier place for the casino to do business. Delarosa described Respondent as a person with high character. Although they did a lot of political planning, Delarosa believes that Respondent would have expected him to do the right thing legally. He found Respondent enjoyable to work with and very truthful.

120. Martha Copra has known Respondent since 1979 or 1980. They worked together at a few different companies and are friends. Copra does graphic design and marketing work. She has worked at Casino M8trix since 2007, and holds a license issued by City. Copra describes Respondent as a great boss who is ambitious, smart, creative, forward thinking, and appreciative of loyalty and friendships. Respondent has never asked her to do anything unethical, and she trusts him. Copra opined that Respondent is an honest person.

121. In addition to these two witnesses, Respondent's accountant, Jerome Bellotti, opined that he is a person of honesty, integrity, and good character. He has known Respondent since 2007, and Respondent has never attempted to use any unusual costs or expenses or asked him to lie in connection with tax matters.

## LEGAL CONCLUSIONS

*Motion to dismiss*

### JURISDICTION

1. In his closing brief, Respondent contends that this matter should be dismissed for a variety of reasons. First, he argues that the Commission lacked jurisdiction to proceed on a denial of license renewal due to passage of time, and that this also prevents proceeding on the Accusation. He cites section 19876, which establishes time periods for Commission action on renewal applications, concluding that as Respondent's case has taken in excess of those periods, his license was renewed by operation of law. Respondent's arguments lack merit. It is the Commission's duty to determine suitability for licensure of all applicants and licensees. Serious concerns existed regarding Respondent's suitability. Rather than issue an outright denial, the Commission stayed the application, and referred the matter for an evidentiary hearing. Respondent is not persuasive that any act or delay in acting caused the Commission to lose jurisdiction to decide whether Respondent's license should be renewed or disciplined.

## DUE PROCESS VIOLATIONS

2. Respondent contends that the Bureau's actions surrounding its attempt to secure testimony from Bryan Roberts resulted in a denial of due process under the Administrative Adjudication Bill of Rights. Specifically, he points to the obligation of government attorneys in criminal matters to act with a high degree of integrity and impartiality. As reflected in Finding 11, the Roberts matter was treated as a credibility issue, and resolved in favor of Respondent. No due process violation was established.

3. Respondent next argues a due process violation because the Bureau ordered distributions from Garden City to Respondent withheld during the pendency of this action. This argument lacked authority and was also unpersuasive.

4. Respondent next argues a due process violation based upon alleged impermissible ex parte communications between Bureau staff and counsel. The fact of impermissible communications was not established and the argument was unpersuasive.

5. Finally, Respondent argues a lack of required notice. Section 19868, subdivision (b), requires the Bureau Chief to meet with an applicant before recommending denial. Respondent received notice of the Bureau's concerns and actions through representatives. Although it was after the recommendation of denial was made, Respondent's attorney attended a meeting at the Bureau. It was not established that the absence of a meeting between the Bureau Chief and Respondent violated his due process rights.

6. Respondent received all of the rights he is entitled to receive in his appeal of the denial of licensure and as regards the Accusation and his appeal of the license renewal denial. He received notice, discovery, and a full hearing by a neutral decision-maker. No violation of Respondent's due process rights was established.

## ORDER ON MOTION TO DISMISS

7. Respondent's motion to dismiss is denied.

*First cause: prohibited interest in the funds wagered, lost or won by a third-party provider*

8. Section 19805 contains definitions that apply to the GCA. Respondent's status as a shareholder in Garden City means that he is a "licensed gambling enterprise" (§ 19805, sub. (m)), also called "the house" (§ 19805, sub. (t)).

9. Section 19984, subdivision (a), prohibits a gambling enterprise from having "any interest, whether direct or indirect, in funds wagered, lost, or won." Cause for license revocation and denial of licensure exists pursuant to this provision by reason of the fact set forth in Findings 21 through 25.

*Second cause: providing false or misleading information to the Bureau*

10. Section 19859, subdivision (b), provides that applicants are disqualified from licensure by supplying information about a material fact that is untrue or misleading. Cause for license revocation and denial of licensure exists pursuant to this provision by reason of the facts set forth in Findings 39 through 44, 48 through 55, 58 through 68, and 118.

*Third cause: failure to provide information and documentation requested by the Chief*

11. Section 19859, subdivision (b), provides that applicants are disqualified from licensure if they do not provide information requested or fail to reveal facts material to qualification. Cause for license revocation and denial of licensure exists pursuant to this provision by reason of the facts set forth in Findings 69 through 88, 95, 96, and 118.

*Fourth cause: unqualified for licensure*

12. No cause for revocation or denial was established pursuant to this cause of action.

*Fifth cause: disqualified for licensure*

13. Section 19823, subdivision (a)(1), provides that the Commission is responsible for "assuring that licenses . . . are not issued to, or held by, persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare." The matters set forth in Finding 116 through 118 provide cause to conclude that Respondent is disqualified for licensure pursuant to this requirement.

*Analysis*

14. The gambling industry in California is very highly regulated. It was the desire of the Legislature in allowing forms of gambling to do everything it could through a statutory scheme to keep the business fair, honest, and not a vehicle for the operation of criminal activity. As initially referenced above, the responsibilities of the Commission under the GCA include the duties set forth in section 19823, subdivision (a)(1):

Assuring that licenses . . . are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

In addition, section 19857 sets out certain requirements for licensure. Pursuant to subdivision (a), the Commission must be satisfied that proposed licensees are persons "of good character, honesty, and integrity." Pursuant to subdivision (b), the Commission must be satisfied that proposed licensees are persons

whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

15. Before the Commission is a licensee who took advantage of opportunities created by the GCA to invest in and operate a cardroom. The business quickly experienced considerable financial success. But instead of paying close attention to the legal requirements to operate, and doing his best to comply, Respondent took deliberate steps in contravention of the law. The most blatant of these was Respondent's creation of Secure Stone, LLC, in his wife's name. It is reasonable to infer given the factual circumstances that Secure Stone was established to funnel money from the third-party provider to Respondent, a task it accomplished. Such was a clear violation of the GCA. As regards Respondent's failure to honestly communicate with regulators, his provision of the Grant Thornton report was a very significant violation. It was the opposite of an independent report; the information was provided by Respondent, and it contained many errors, half-truths, and omissions. Many of the specific allegations in the Accusation were not substantiated by the evidence, but the record is more than sufficient to support the removal of Respondent as a GCA licensee in California. Respondent showed a lack of good character, honesty, and integrity by his violations. The public interest requires license revocation and denial of Respondent's pending application.

#### *Penalty assessment*

16. The GCA provides for the imposition of fines against licensees found to have committed violations. Section 19930, subdivision (c), establishes the maximum fine to be imposed on a license holder such as Respondent: "[N]o fine imposed shall exceed [\$20,000] for each separate violation of any provision of this chapter or any regulation adopted thereunder."

17. Complainant requests that a minimum of \$4,659,000 and maximum of \$18,815,000 in fines be imposed against Respondent. The calculations assume a total of 56 violations, and application of a theory of continuing violations. The lesser amount is calculated with an additional amount of \$1,000 per violation for "failure to cure" for a specified number of days and the greater amount with an additional amount of \$5,000.

18. Complainant asserts "that each day that the required disclosure was not made -- or an untrue disclosure was not cured -- constitutes a separate violation." The cure date is generally described as the date the Accusation was filed. This theory of assessing fines, along with the arbitrary date it is contended the violation has been cured, is presented without

legal authority or credible factual support. It is not persuasive, and will not be employed in determining the amount of the fine.

19. In support of the large fines requested, Complainant reports the amount of money Respondent may make upon the sale of his interest in Garden City, and the general fact that there are large amounts of money potentially to be made in controlled gambling. Complainant also points to the GCA's goals of deterring others from violating its provisions, and to "promote the Act's duty of full and true disclosure and revenue-sharing only with licensed persons." These facts may be true and the goals worthy, but the Legislature decided on a maximum fine of \$20,000 per violation. This being said, Complainant's points are well taken as regards the large amounts of money involved and the need for deterrence. The record does support imposition of the maximum fine for each violation that was established.

20. Considering the facts established and the legal authority, it is concluded that a total fine of \$430,000 is supported by the facts and law, and reasonable in these circumstances. The total was arrived at as follows:

a. First cause of action: section 19984, subdivision (a), eight violations at \$20,000 per violations, total \$160,000.

b. Second cause of action: section 19859, subdivision (b) (false information), seven and one-half violations at \$20,000 per violation, total \$150,000.

c. Third cause of action: section 19859, subdivision (b) (failure to provide information), six violations at \$20,000 per violation, total \$120,000.

d. Fourth cause of action: no violations established.

e. Fifth cause of action: section 19823, subdivision (a)(1), fines for these violations were imposed under the first through third causes of action.

21. Complainant also requests fines be assessed for violations of Penal Code section 337j, subdivision (a)(2). Complainant did not allege any violations of that criminal statute. No fine is assessed pursuant to the Penal Code.

#### *Cost recovery*

22. The GCA contains a provision that allows the Commission to recover its costs in certain instances. Section 19930, subdivision (d), provides:

In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the



department the reasonable costs of the investigation and prosecution of the case.

In cases brought under the formal provisions of the Administrative Procedure Act (Gov. Code, § 11550, et seq.), such as this one, California Code of Regulations, title 1, section 1042, must be followed when a cost award is requested. Section 1042 provides first, that a request for costs must be alleged in a pleading. Further, it provides that "proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal Code Regs., tit. 1, § 1042, subd. (b).) It also notes that "[T]he ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs." (Cal Code Reg., tit. 1, § 1042, subd. (b)(4).) It is clear that evidence at hearing is required, not only for the receipt of declarations, should that method of proving costs be employed, but to allow a respondent to present evidence as well.

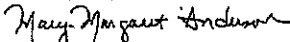
23. Complainant alleged in the Accusation that costs would be requested; Complainant did not, however, present "suitable proof" of costs incurred at the hearing. Instead, Complainant's counsel attached declarations to the closing brief and reply brief.

24. When the briefs were received, the record had since closed for the receipt of evidence; it remained open only for the receipt of closing briefs. And no request was made to re-open the record to receive additional evidence. Accordingly, the request for an award of costs will be denied.

#### ORDER

1. License number GEOW-001330, issued to Respondent Eric Swallow, is revoked.
2. Renewal of license number GEOW-001330, issued to Respondent Eric Swallow, is denied.
3. Respondent shall pay a total of \$430,000 in fines to the Commission.
4. Complainant's request for a cost award is denied.

DATED: December 10, 2015

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MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings