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8

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

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

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

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

26 **Respondents.**
27
28

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

COMPLAINANT'S CLOSING BRIEF

1 In this case, Complainant Wayne J. Quint, Jr. (Complainant), solely in his capacity as
2 Chief of the Department of Justice, Bureau of Gambling Control (Bureau), filed an accusation
3 with the California Gambling Control Commission (Commission) seeking to discipline
4 Respondent Eric G. Swallow's (Mr. Swallow) and other respondents'¹ gambling licenses. After
5 the Commission approved a settlement with the other respondents, Mr. Swallow is the only
6 remaining respondent. Administrative Law Judge Mary-Margaret Anderson heard
7 Complainant's case against Mr. Swallow's license. She presided over a six and one-half day
8 hearing at the Office of Administrative Hearings (OAH) in Oakland between August 10, 2015,
9 and August 19, 2015. Complainant submits the following closing brief.

10 INTRODUCTION

11 Complainant respectfully requests that the Judge recommend that Mr. Swallow's
12 gambling license (GEOW-001330) be revoked, his renewal application be denied, a maximum
13 fine be imposed, and the Bureau's costs and fees be awarded. Among other things, in
14 derogation of statutory obligations, Mr. Swallow provided untruthful and misleading
15 information to, and failed to provide information and documents requested by, the Bureau.
16 Additionally, he indirectly received payments prohibited by the Gambling Control Act (Bus. &
17 Prof. Code, § 19800 et seq.) (Act). He also provided untrue and misleading information to the
18 Commission and the City of San Jose.²

19 This proceeding arises under the Act and regulations adopted by the Commission. The
20 Act is grounded in public protection, and is to be liberally construed to effectuate the protection
21 of the public health, safety, and welfare. (Bus. & Prof. Code, § 19971.) It reflects the
22 Legislature's determination that comprehensive measures are necessary to ensure that lawful

23
24 ¹ In addition to Mr. Swallow, Complainant's accusation named as respondents Garden City,
25 Inc., doing business as Casino M8trix (Garden City), Peter Lunardi (Mr. Lunardi), Jeanine
26 Lunardi (Mrs. Lunardi), and The Lunardi Family Living Trust, dated August 27, 2008 (Lunardi
Trust). (Exh. DT.) On May 14, 2015, the Commission approved a settlement with the
respondents other than Mr. Swallow. (Exh. DX.)

27 ² The public interest in keeping the highly regulated industry of gambling honest and
28 competitive, and "free of criminal and corruptive elements," depends on full and truthful
disclosure by the applicants and licensees. (See Bus. & Prof. Code, § 19801, subd. (j).)

1 gambling is free from corruptive elements and is conducted honestly. (Bus. & Prof. Code, §
2 19801, subd. (g).) Strict and comprehensive regulation of all persons, practices, and activities
3 related to lawful gambling establishments³ maintains the public trust and confidence that
4 gambling is not corrupt or dishonest. (Bus. & Prof. Code, § 19801, subd. (h).) Unsuitable
5 persons are not to be permitted to associate with gambling activities or gambling
6 establishments. (Bus. & Prof. Code, § 19801, subd. (k).) A license is a revocable privilege.
7 (*Ibid.*)

8 This case primarily involves the statutory duty of full and true disclosure that arises
9 under the Act. Business and Professions Code section 19866 expressly creates that duty:

10 An applicant for licensing or for any approval or consent
11 required by this chapter, shall make full and true disclosure of all
12 information to the department and the commission as necessary to
13 carry out the policies of this state relating to licensing,
14 registration, and control of gambling.

14 The evidence shows that Mr. Swallow, who is endorsed as license number GEOW-001330 on
15 Garden City's state gambling license (GEGE-000410),⁴ did not meet the statutory duty. Rather,
16 he provided untrue or misleading information to the Bureau in multiple ways. He also failed to
17 provide information and documentation requested by the Bureau in multiple ways.

18 Providing untrue or misleading information or failing to provide information and
19 documentation disqualifies an applicant from licensure. (Bus. & Prof. Code, § 19859, subd. (b)
20 [mandatory denial to an applicant].) Additionally, providing untrue or misleading information

21 _____
22 ³ The Act defines a "gambling establishment" as the place where controlled gambling, or
23 activity directly related to controlled gambling, occurs. (Bus. & Prof. Code, § 19805, subd.
(o).) In other words, a gambling establishment is a card room.

24 ⁴ The Act requires that an owner of a gambling enterprise apply for and obtain a state gambling
25 license. (Bus. & Prof. Code, § 19851, subd. (a).) That person or entity is known as the "owner-
26 licensee." (*Ibid.*) Other persons who obtain a state gambling license, as required by the Act,
27 cannot receive a separate license certificate. (Bus. & Prof. Code, § 19851, subd. (b); see also
28 Cal. Code Regs, tit. 4, § 12002, subd. (u) ["Licensee" means any person endorsed on a license
by the Commission].) Instead, they are endorsed on the license certificate issued to the owner.
(*Ibid.*) Here, as a shareholder, director, and officer of Garden City, Mr. Swallow was required
to be licensed. (Bus. & Prof. Code, § 19852, subd. (a).) He is endorsed on Garden City's
license certificate. (Exh. 2, p. 2-6.)

1 or failing to provide information and documentation requires revocation of an existing license.
2 (Cal. Code Regs., tit. 4, § 12568, subd. (c)(4) [mandatory revocation of a state gambling
3 license].)

4 The criteria for mandatory disqualification apply to a one-time, or single, act or
5 omission. But the evidence here shows that Mr. Swallow's acts and omissions were many-fold.
6 Mr. Swallow, therefore, is disqualified for licensing. His license must be revoked. (Cal. Code
7 Regs., tit. 4, § 12568, subd. (c)(4) [*shall be subject to revocation*].) His renewal application
8 must be denied. (Bus. & Prof. Code, § 19859 [*shall deny a license*].)

9 Additionally, the Act places a premium on good character, honesty, and integrity.⁵
10 (Bus. & Prof. Code, § 19857, subd. (a).) In other words, character counts. So do a person's
11 business and financial practices. (Bus. & Prof. Code, § 19857, subd. (b).) When a licensee no
12 longer meets any criterion for qualification, his or her license "*shall be subject to revocation*."
13 (Cal. Code Regs., tit. 4, § 12568, subd. (c)(3), italics added.) The evidence here shows that Mr.
14 Swallow is not a person of good character, honesty, and integrity. The evidence further shows
15 that his prior activities pose a threat to the effective regulation of controlled gambling and
16 enhance the dangers of unsuitable practices in the carrying on of the business and financial
17 arrangements incident to controlled gambling. Mr. Swallow's license must be revoked.

18 As detailed below, the evidence overwhelmingly shows Mr. Swallow is unsuitable for
19 licensure. His gambling license must be revoked, and any license renewal must be denied. He
20 is disqualified from, and unqualified for, licensure under the Act. Revocation and denial,
21 however, are insufficient to fully protect the public interest. Those remedies may stop the
22 influx of riches, but they do not penalize self-enriching illegal conduct. Here, despite the acts
23 and omissions that disqualify him from licensure, Mr. Swallow stands to walk away from his
24 venture into controlled gambling with tens of millions of dollars.⁶ Moreover, other owners

25 ⁵ Business and Professions Code section 475, subdivision (c), does not apply to the Act. (Bus.
26 & Prof. Code, § 476, subd. (a).) Instead, Business and Professions Code section 19857,
27 subdivision (a), expressly makes "good character, honesty, and integrity" a criterion for license
qualification.

28 ⁶ Those tens of millions of dollars will be in addition to tens of millions of dollars in
(continued...)

1 must be prospectively deterred from being untruthful with, or failing to provide information to,
2 regulators. That requires a substantial fine. Otherwise, no owner, present or future, incurs any
3 significant risk by being untruthful with, or failing to provide information to, gambling
4 regulators. The maximum fine possible also is necessary to preserve the public trust that full
5 and true disclosure will be made to the Bureau, the Commission, and other gambling regulators.

6 **JURISDICTION**

7 The Commission has jurisdiction over the operation and concentration of gambling
8 establishments and all persons and things having to do with operation of gambling
9 establishments. (Bus. & Prof. Code, § 19811, subd. (b).) The Act tasks the Bureau with,
10 among other responsibilities, investigating suspected violations of the Act and initiating
11 disciplinary actions. (Bus. & Prof. Code, §§ 19826, subds. (c) & (e) & 19930, subd. (b).) Upon
12 the Bureau filing an accusation, the Commission proceeds under the Government Code section
13 11500 et seq. (Bus. & Prof. Code, § 19930, subd. (b); see Cal. Code Regs., tit. 4, § 12554,
14 subd. (a).) The Commission's disciplinary powers include, among other things, revocation and
15 imposition of fines or monetary penalties. (Cal. Code Regs., tit. 4, § 12554, subd. (d).)

16 Here, Complainant initially filed an accusation, which after amendments is now the First
17 Amended Accusation and Statement of Issues (Amended Accusation). (Exh. 1, p. 1-1.) Rather
18 than determine whether to renew Mr. Swallow's license, the Commission referred the renewal
19 issue to an evidentiary hearing to be consolidated with the initial accusation. (Exh. 2, p. 2-1;
20 Exh. AO, p. AO-2.) Because this proceeding involves both a revocation proceeding and a
21 renewal application, Complainant eventually styled his pleading as an accusation and statement
22 of issues.⁷ (See Gov. Code, §§ 11503 [accusation for revocation] & 11504 [statement of issues

23 _____
24 (...continued)

distributions that Mr. Swallow received through affiliated entities. (See Exh. 1, p. 1-27.)

25 ⁷ As a matter of course, the Commission does not deny applications without a hearing
26 conducted by either OAH pursuant to Government Code section 11500 et seq. or the
27 Commission itself pursuant to Business and Professions Code section 19870. Business and
28 Professions Code section 19825 provides that the Commission may require that any matter it is
authorized or required to consider in a hearing or a meeting of an adjudicative nature regarding
the denial of a license be heard by OAH.

1 to determine whether a license should be renewed].) Mr. Swallow served a notice of defense.
2 (Exh. 1, p. 1-28.)

3 **THE STANDARD AND THE BURDEN OF PROOF**

4 In this proceeding, the standard of proof is the preponderance of the evidence, which “is
5 such evidence as when considered and compared with that opposed to it, has more convincing
6 force, and produces a belief in the mind of the fact-finder that what is sought to be proved is
7 more likely true than not true.” (Cal. Code Regs., tit. 4, § 12554, subd. (c).)

8 Complainant here seeks to discipline Mr. Swallow’s license, and has the burden of
9 proving the grounds for the Commission to take disciplinary action. Complainant has
10 established by a preponderance of the evidence that Mr. Swallow is disqualified from, and
11 unqualified for, a state gambling license.⁸

12 **GENERAL BACKGROUND FACTS**

13 Garden City presently operates a 49-table card room known as Casino M8trix in San
14 Jose, California. Casino M8trix began operations at 1887 Matrix Boulevard on August 8, 2012.
15 Previously, Garden City operated its card room on Saratoga Boulevard in San Jose. Garden
16 City is subject to regulation by both the State of California and the City of San Jose.

17 **A. The Swallow-Lunardi Ownership**

18 Mr. Swallow and Mr. and Mrs. Lunardi (collectively, the Lunardis) acquired Garden
19 City from a bankruptcy trustee in 2007. The purchase price was approximately \$22 million.
20 (VI RT⁹ 167:19-22 [\$22 million]; see III RT 171:8-15 [\$19 to \$23 million price range].)
21 Comerica Bank provided financing in connection with the purchase.¹⁰ Mr. Swallow and the
22 Lunardis took over the card room’s operations on March 1, 2007. Mr. Swallow owns 50

23 ⁸ Business and Professions Code section 19856, subdivision (a), provides that the burden of
24 proving his or her qualifications to receive any license is on the applicant. Here, Complainant
25 has shown by a preponderance of the evidence that Mr. Swallow is disqualified from, and
disqualified for, licensure. And Mr. Swallow offered no evidence to contradict his
disqualification.

26 ⁹ The Reporter’s Transcript of Proceedings is referred to as “RT.”

27 ¹⁰ Repayment of Comerica Bank’s financing was secured by Garden City’s assets (Exh. 51, p.
28 51-121) and by stock pledges (*id.* at p. 51-125).

1 percent of Garden City's stock; the Lunardi Trust owns the other 50 percent. Initially, the
2 Lunardis owned 50 percent of the stock. Mr. Swallow and the Lunardis first were endorsed on
3 Garden City's state gambling license by the Commission on March 1, 2007. (Exh. EC, p. EC-
4 6.) Thereafter, the Commission approved the Lunardis transferring their stock to the Lunardi
5 Trust. (Exh. CF, p. CF-1.)

6 In 2007-2008, its first year of operation under the Swallow-Lunardi ownership, Garden
7 City's gross gaming revenues were approximately \$43.4 million, yielding a net income of \$1.7
8 million. (Exh. AU, p. AU-5.) For calendar year 2008, Garden City's gross gaming revenues
9 were approximately \$48.7 million (Exh. 20, p. 20-28), and its operating income was \$33 million
10 (*id.* at p. 20-31) Thereafter, for the years 2009 through 2011, gross gaming revenues declined,
11 and net income became net losses as follows:

Year	Gross Gaming Revenues	Net Income (Loss)	Evidence
2009	\$46,326,352	\$37,105	Exh. 12, p. 12-5
2010	\$43,133,872	\$618,273	Exh. 13, p. 13-5
2011	\$41,725,712	(\$127,296)	Exh. 14, p. 14-4

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18 In 2012, gross gaming revenues increased to \$49,501,689, but Garden City still incurred a net
19 loss of \$23,999. (Exh. 15, p. 15-5.)

20 **B. The Related Companies**

21 In 2008 or 2009, three Nevada limited liability companies were formed: Dolchee LLC
22 (Dolchee); Profitable Casino LLC (Profitable Casino); and Potere LLC (Potere) (collectively,
23 Related Companies). (III RT 96:7-13, 186:3-7.) Each of those companies was affiliated with
24 Garden City's owners.¹¹ For the years 2009 through 2012, Garden City paid monies to the
25 Related Companies as follows:

26 ¹¹ Mr. Swallow was Profitable Casino's sole owner. Mr. Lunardi was Potere's sole owner. As
27 set forth below, the Eric G. and Deborah A. Swallow Family Trust dated August 31, 2004
28 (Swallow Trust) and the Lunardi Trust were Dolchee's owners. Neither the Swallow Trust nor
Deborah Swallow has applied for, or obtained, a gambling license.

(continued...)

Year	Dolchee	Profitable Casino	Potere	Evidence
2009	\$7,880,000	\$5,000,000	\$5,000,000	Exh. 12, p. 12-14
2010	\$7,182,000	\$2,775,000	\$2,775,000	Exh. 7, p. 7-541
2011	\$11,400,000	\$2,850,000	\$2,850,000	Exh. 7, p. 7-541
2012	\$11,900,000	\$3,325,000	\$3,325,000	Exh. 7, p. 7-541
Totals	\$38,362,000	\$13,950,000	\$13,950,000	

The payments to the Related Companies were not invoiced or otherwise documented. In responding to the Bureau during its investigation, Mr. Swallow wrote:

There are no invoices. It has been agreed upon by ownership as standard practice to estimate the annual payment for the year per the agreement^[12] and then make monthly payments based on available cash flow to give the Casino operational flexibility. This is the same for payments to Dolchee and Profitable Casino.

(Exh. 7, p. 7-13 [Response to Request No. 84].) Mr. Lunardi testified repeatedly that the payments to the Related Companies were distributions to Garden City's shareholders. (E.g., III RT 96:7-13, 106:9-23; 103:18-104:4.) Mr. Swallow testified that annual payments were estimated and made without regard to contractual amounts and without invoices. (I RT 124:4-17; III RT 103:18-104:4.) None of the Related Companies has applied for, or obtained, a state gambling license.

(...continued)

¹² Each Related Company and Garden City entered into an agreement by which Garden City was to pay \$400,000 or more monthly. (Exh. 7, pp. 7-460 [Dolchee], 7-400 [Profitable Casino], 7-535 [Potere].) As set forth above, between 2009 and 2012, Garden City always paid more or less than the agreed annual amount. (See also *id.* at p. 7-541 [paid more or less than agreed monthly amount].)

1 **C. Airport Parkway and Airport Opportunity**

2 Airport Parkway Two LLC (Airport Parkway) owns the 1887 Matrix Boulevard
3 property, where Casino M8trix operates. Airport Parkway has a single member and owner:
4 Airport Opportunity Fund LLC (Airport Opportunity), which is a Delaware limited liability
5 company. Until approximately March or April 2011, Airport Opportunity's members were the
6 Lunardi Trust and the Swallow Trust. (See Exh. 35.) In March or April 2011, Mr. Swallow
7 and the Lunardis, as trustees of the Lunardi Trust, signed a new version of the operating
8 agreement, which effectively changed the membership from the two trusts to the Lunardi Trust
9 and Mr. Swallow. (Exhs. BO & EJ.)¹³ Thereafter, and despite the membership change, on June
10 24, 2011, the Bureau was presented with a chart showing the two trusts to be Airport
11 Opportunity's members. (Exh. 22, pp. 22-1 [date application received], 22-4 [ownership]; Exh.
12 23.) Additionally, in response to the Bureau's inquiry in July 2013, Mr. Swallow confirmed
13 that the two trusts were Airport Opportunity's members. (Exh. 7, p. 7-5 [Response to No. 34].)

14 **D. 1887 Matrix Boulevard**

15 Comerica Bank and the Related Companies provided monies for Airport Parkway to
16 acquire the 1887 Matrix Boulevard property. The Related Companies contributed a total of
17 \$2,050,000 for the purchase: Dolchee, \$900,000; Potere, \$675,000; and Profitable Casino,
18 \$475,000. (Exh. 7, pp. 7-255, 7-340.) Comerica Bank later provided additional financing in the
19 form of a construction loan. (See *id.* at p. 7-256.) Garden City guaranteed the Comerica Bank
20 loans relating to the 1887 Matrix Boulevard project. (See Exh. 51, p. 51-109.) Garden City's
21 assets secure repayment of those loans. (*Id.* at p. 51-121.) Those loans also are secured by the
22 owners' stock pledges. (*Id.* at p. 51-125.) Dolchee added more than \$15 million in connection
23 with the 1887 Matrix Boulevard project. (Exh. 7, p. 7-.255)

24 Garden City leases the 1887 Matrix Boulevard property from Airport Parkway. (Exh. 7,
25 p. 7-342.) Through December 31, 2012, Garden City had paid \$4,105,351 in rents to Airport
26

27 ¹³ Mr. Swallow testified that he does not know of any document signed by the Swallow Trust
28 relinquishing, or assigning, its membership interest. (I RT 146:7-11, 147:4-6.)

1 Parkway.¹⁴ (*Id.* at p. 7-371.) The monthly rent was \$600,797.67 beginning August 1, 2012.
2 (*Ibid.*; see also *id.* at p. 7-342), but later was reduced to \$525,000 as part of the other
3 respondents' settlement that the Commission approved (Exh. DX, p. DX-18, ¶ 20).

4 **E. Hollywood Park Casino**

5 In August 2012, Mr. Swallow submitted two applications for state gambling licenses
6 with respect to Hollywood Park Casino. One was for LAX Property, LLC (LAX). (Exh. 5.)
7 The other was for himself. (Exh. 6.) Mr. Swallow was LAX's sole member. In connection
8 with those applications, Mr. Swallow appeared, and spoke, at a Commission meeting conducted
9 on February 21, 2013. (Exh. 8.) He and Jerome Bellotti (Mr. Bellotti), his accountant,
10 appeared, and spoke, at a Commission meeting conducted on April 18, 2013. (Exh. 9.)

11 Exhibit 1, page 27, is diagram showing the relationships and money flows established
12 by the evidence and described throughout this brief. Stacey Luna Baxter (Ms. Luna Baxter)
13 testified that the diagram did not show all funds that flowed to the Swallows and the Lunardis.
14 (VI RT 119:10-24.)

15 **MR. SWALLOW IS NOT SUITABLE FOR LICENSURE – HIS LICENSE MUST BE**
16 **REVOKED AND HIS RENEWAL APPLICATION MUST BE DENIED**

17 Complainant alleges five causes for discipline and denial of renewal. Complainant has
18 shown each by the preponderance of the evidence. Therefore, Mr. Swallow's gambling license
19 must be revoked. His renewal application must be denied.

20 **A. First Cause for Discipline and Denial of Renewal: Mr. Swallow Had Prohibited**
21 **Interests in the Funds, Wagered, Lost, or Won by a Third-Party Provider**

22 Complainant's first cause for discipline and denial of renewal is that Mr. Swallow is not
23 suitable for licensure because he, directly or indirectly, had a prohibited interest in, and received
24 prohibited payments from, Team View Player Services, which was a third-party provider of
25 proposition player services to Garden City. (Amended Accusation, pp. 14-15, ¶ 45.) Business
26 and Professions Code section 19984, subdivision (a) prohibits a gambling enterprise or the

27 ¹⁴ Airport Parkway also received approximately \$5.4 million in rents from Casino M8trix, Inc.
28 (Exh. 7, p. 341.)

1 house¹⁵ from having any interest, whether direct or indirect, in funds wagered, lost, or won by a
2 third-party provider of proposition player services.

3 Through Secure Stone LLC (Secure Stone), Mr. Swallow had an indirect interest in the
4 monies wagered, lost, or won by Team View Player Services. The evidence shows:

- 5 • Tim Gustin was the managing member of Team View Player Services. (Exh. 26,
6 p. 26-13.)
- 7 • Team View Player Services entered into a third-party provider agreement with
8 Garden City, which signed the agreement on January 23, 2010. (Exh. 26, p. 26-
9 13). The agreement provided for an annual payment of \$2.1 million. (*Id.* at p.
10 26-4.) The agreement had a one-year term, commencing on May 1, 2010. (*Id.* at
11 p. 26-1.)
- 12 • On February 20, 2010, John Park, whom Team View Player Services was
13 replacing, offered to pay nearly \$4.1 million to provide third-party proposition
14 player services to Garden City. (Exh. 43; III RT 13:4-12.)
- 15 • Mr. Park testified that Mr. Gustin had not worked for a third-party provider of
16 proposition player services before owing Team View Player Services. (III RT
17 14:20-24.)
- 18 • On February 22, 2010, the Operating Agreement for Secure Stone, LLC was
19 executed by Mrs. Swallow, as its only member. (Exh. BP, p. BP-14.)
- 20 • Secure Stone was a Delaware limited liability company. (I RT 188:23-189:16.)
21 It had the same address as other Delaware limited liability companies affiliated
22 with Mr. Swallow. (IV RT 59:15-60:18; II RT 78:8-21.)
- 23 • Mr. Swallow testified that Secure Stone was one of “my companies” and one of
24 his “affiliated companies.” (VI RT 191:24-192:1; VII RT 31:1-4.)

25
26 ¹⁵ The Act defines “house” as “the gambling enterprise, and any owner, shareholder, partner,
27 key employee, or landlord thereof.” (Bus. & Prof. Code, § 19805, subd. (t).) Mr. Swallow
28 unquestionably is a shareholder of Garden City, which is the gambling enterprise. (See Bus. & Prof. Code, § 19805, subd. (m) [defining gambling enterprise].)

- 1 • On direct examination, Mr. Swallow took ownership interest of the Secure Stone
2 banking software: “I was proud of the software that we wrote, and what it did.”
3 (VI RT 189:9-14.)
- 4 • Mr. Gustin was the managing member of Team View Player Associates LLC
5 (Team View Associates). (Exh. 25, p. 25-4 [Response to Request No. 13].) He
6 represented to the Bureau that he formed Team View Associates to, among other
7 things, provide support services to Team View Player Services. (*Id.* at p. 25-1
8 [Response to Request No. 1].)
- 9 • Team View Associates entered into an Application Service Provider Royalty
10 License Agreement (Secure Stone Agreement) with Secure Stone. (Exh. 29.)
11 That agreement’s effective date was May 1, 2010. (*Id.* at p. 29-1.) Under the
12 Secure Stone Agreement, Team View Associates was to pay \$2,342,839 as a
13 two-year fee purportedly for software services.¹⁶ (*Id.* at p. 29-16.)
- 14 • Mr. Swallow participated in reaching the Secure Stone Agreement, including
15 discussing pricing with Mr. Gustin. (II RT 71:14-72:6.)
- 16 • Michael Conroy testified that the Secure Stone Agreement was substantially the
17 same as an agreement between Garden City and Profitable Casino. (IV RT 56:4-
18 9.)
- 19 • Mr. Swallow knew that he could not receive monies directly from Team View
20 Player Services. (Exh. 56, p. DM-76:16-17.)
- 21 • Mr. Swallow told his wife that he could not receive monies directly from Team
22 View Player Services. (Exh. 56, p. DM-76:16-17; see II TR 83:12-18.)
- 23 • Mr. Lunardi was not told of the Secure Stone Agreement or Mr. Swallow’s
24 interest. (III RT 89:10-18, 94:3-95:3.)

25 ¹⁶ The payments from Team View Associates to Secure Stone clearly were to make up for the
26 Swallows’ share of monies lost once John Park offered to pay \$4.065 million annually. That is,
27 under the Team View Player Services contract, Garden City would receive \$2.1 million
28 annually, or approximately \$2 million less than John Park offered. The Swallows’ 50 percent
interest would be \$1 million annually. Over the two years of the Secure Stone Agreement, \$2.3
million was to be paid to Secure Stone.

- 1 • In response to the Bureau's inquiries, Mr. Swallow's attorneys wrote: "In light
2 of the necessity to separate card room operations from proposition player
3 services, Mr. Swallow declined to provide Team View with a software solution.
4 However, it is our understanding that Bryan Robertson [sic] was willing to work
5 on a solution for Team View. The end result was the formation of" Secure
6 Stone. (Exh. 10, p. 10-2.)
- 7 • Mr. Swallow's attorneys also wrote that Secure Stone's only source of income
8 was the Secure Stone Agreement. (Exh. 10, p. 10-2.)
- 9 • Mr. Swallow's attorneys further wrote: "Secure Stone, LLC receives income
10 from its agreement with Team View. As a single member LLC, revenue from
11 Secure Stone, LLC would flow through to [Mrs.] Swallow." (Exh. 10, p. 10-3.)
- 12 • Team View Player Services represented to the Bureau that it paid more than \$2
13 million to Team View Associates in 2012 and part of 2013. (Exh. 25, p. 25-3
14 [Response to Request No. 7].)
- 15 • Team View Associates paid nearly \$3.6 million to Secure Stone under the
16 Secure Stone Agreement. (Exh. 7, p. 7-543; see also Exh. 25, p. 25-4, Exh. 53,
17 p. 53-3.)
- 18 • The monies received by Secure Stone were viewed by Mrs. Swallow as
19 community property. (Exh. 56, p. DM-144:22-145:13.)
- 20 • Mr. Swallow used monies from Secure Stone to pay Bryan Roberts for writing
21 code. (VII RT 30:21-31:6; VI RT 191:12-192:2; Exh. 49, pp. 49-19 to 49-20.)
- 22 • Mr. Swallow handled the receipt of monies for Secure Stone from Team View
23 Associates. (Exh. 56, p. DM-74:12-24.)

24 In sum, the evidence shows that Mr. Swallow, directly or indirectly, received monies
25 from a third-party provider of proposition player services, whose only source of funds was
26 monies wagered, won, or lost. As a Garden City shareholder, Mr. Swallow was the "house."
27 (Bus. & Prof. Code, § 19805, subd. (t).) He thus had an interest, and received payments,
28 prohibited by Business and Professions Code section 19984, subdivision (a). Generally, any

1 person who willfully violates any Act provision is guilty of a misdemeanor. (Bus. & Prof.
2 Code, § 19942, subd. (b).)

3 Under such facts, Mr. Swallow is unqualified for licensing. Receiving prohibited
4 payments is an unsuitable, as well as an illegal, business practice in carrying on the business
5 and financial arrangements incidental to controlled gambling. (Bus. & Prof. Code, § 19857,
6 subd. (b).) Receiving prohibited payments, and funneling those payments through a Delaware
7 limited liability company, poses a threat to effective regulation of controlled gambling. (*Ibid.*)
8 Additionally, the above evidence shows that Mr. Swallow is not a person of good character,
9 honesty, and integrity. (Bus. & Prof. Code, § 19857, subd. (a).)

10 In view of being unqualified for licensure, revocation is the only discipline available
11 with respect to Mr. Swallow's active license. (Cal. Code Regs., tit. 4, § 12568, subd. (c)(3)
12 ["shall be subject to revocation"].) Renewal should be denied because he is unqualified.
13 Accordingly, Mr. Swallow cannot "clearly establish . . . qualification" in accordance with the
14 Act, and renewal must be denied. (Bus. & Prof. Code, § 19859, subd. (a).)

15 **B. Second Cause for Discipline and Denial of Renewal: Mr. Swallow Provided**
16 **Untruthful or Misleading Information to the Bureau**

17 Complainant's second cause for discipline and denial of renewal is that Mr. Swallow is
18 not suitable for licensure because he provided untruthful or misleading information to the
19 Bureau numerous times. (Amended Accusation, pp. 15-20, ¶ 46.) Each instance, standing
20 alone, requires mandatory revocation (see Cal. Code Regs., tit. 4, § 12568, subds. (c)(3) & (4)
21 ["shall be subject to revocation"]) and mandatory denial (see Bus. & Prof. Code, § 19859,
22 subds. (a) & (b) ["shall deny"]). When the instances are taken together, mandatory revocation
23 and denial become even more imperative to protect the public health, safety, and welfare and
24 the integrity of the regulatory process.

25 The Act and the regulations adopted under the Act require license revocation and denial
26 for supplying untrue or misleading information "as to a material¹⁷ fact pertaining to the

27 ¹⁷ Neither the Act nor the regulations adopted pursuant to it define "material." In securities
28 regulation, a fact is material when a substantial likelihood exists that the fact would be

(continued...)

1 qualification criteria.” Business and Professions Code section 19857 sets forth broad criteria
2 for qualification. They include good character, honesty, and integrity. (Bus. & Prof. Code, §
3 19857, subd. (a).) The qualification criteria also include prior activities, reputation, habits, and
4 associations that do not pose a threat to the state’s public interest or to the effective regulation
5 and control of controlled gambling. (Bus. & Prof. Code, § 19857, subd. (b).) The qualification
6 criteria further include activities, reputation, habits, and associations that do not create or
7 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the
8 conduct of controlled gambling or in the carrying on of the business and financial arrangements
9 incidental thereto. (*Ibid.*)

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

17 Additionally, providing untruthful or misleading information to the Bureau flies in the
18 face of the qualification criteria themselves, thus rendering the licensee or applicant unqualified
19 for licensure. No person, who is untruthful with or misleads the Bureau, can be a person of
20 good character, honesty, and integrity. (Bus. & Prof. Code, § 19857, subd. (a).) Similarly, any
21 person, who is untruthful with or misleads the Bureau, poses a threat to effective regulation and
22 control of controlled gambling, and enhances the dangers of illegal practices in the carrying on
23 of the business and financial arrangements incidental to controlled gambling. (Bus. & Prof.

24 _____
25 (...continued)

26 important to an investment decision – i.e., a fact that a reasonable investor would want to know
27 in making a decision. (*People v. Butler* (2012) 212 Cal.App.4th 404, 421.) Following that lead,
28 material to qualification under the Act should be interpreted to mean important to the
Commission in making a suitability determination, or the Bureau in making a suitability
recommendation – i.e., a fact that a reasonable regulator would want to know in making a
decision.

1 Code, § 19857, subd. (b).) A person, who is untruthful with or misleads the Bureau, violates
2 the Act's mandate for full and true disclosure (Bus. & Prof. Code, § 19866).¹⁸ That is a
3 misdemeanor. (Bus. & Prof. Code, § 19942, subd. (b).)

4 **1. Mr. Swallow Was Untruthful or Misleading About the Existence of a Written**
5 **Accountant's Valuation Opinion**

6 Mr. Swallow stated that he had a written accountant's opinion regarding the pricing of
7 certain dealings between Garden City and the Related Companies. In truth, he did not have a
8 written accountant's opinion. The evidence shows:

- 9 • At the February 21, 2013 Commission meeting, Mr. Swallow was asked how he
10 came up with the values that were paid the Related Companies. (Exh. 8, p. 8-
11 68.)
- 12 • Mr. Swallow responded: "My CPA firm did that for me." (Exh. 8, p. 8-68.)
- 13 • When asked if he had a written opinion, Mr. Swallow replied, "Yes. Yes."
14 (Exh. 8, p. 8-68.)
- 15 • Mr. Swallow agreed to provide the written opinion to the Bureau. (Exh. 8, pp. 8-
16 68 to 8-69 & 8-74.)
- 17 • Ms. Luna Baxter, in her capacity as the Bureau's Assistant Chief, attended the
18 February 21, 2013 Commission meeting. (Exh. 8, p. 8-3; V RT 61:18-19, 62:8-
19 11.)
- 20 • The Bureau requested the opinion at least three times. (Exh. 9, pp. 9-51 to 9-52.)
- 21 • The Bureau requested the opinion several times. (V RT 62:23-25.)
- 22 • At the April 18, 2013 Commission meeting, Mr. Bellotti, who was Mr.
23 Swallow's accountant, represented that the monies paid to the Related
24 Companies were fair prices for services rendered. (Exh. 9, pp. 9-95 to 9-96.)
- 25 • At the April 18, 2013 Commission meeting, Mr. Bellotti said no formal
26 valuation was done. (Exh. 9, pp. 9-96 to 9-97, 9-98.)

27 ¹⁸ Full and true disclosure is the foundation of effective gambling regulation. It provides the
28 basis for a suitability determination. (V RT 26:3-15; II RT 136:3-10; see IV RT 116:23-117:4.)

- At the April 18, 2013 Commission meeting, Mr. Bellotti made clear that no written opinion existed: “Sir, there wasn’t a written valuation, so let’s be clear on that, there’s never been a written valuation - -” (Exh. 9, p. 108.)
- Before the April 18, 2013 Commission meeting and despite the Bureau’s requests, neither Mr. Swallow nor his agents told the Bureau that the opinion represented to exist did not, in fact, exist.¹⁹ (V RT 68:2-10.)

In sum, the evidence shows that Mr. Swallow represented to the Commission, and the Bureau, on February 21, 2013, that he had an accountant’s written valuation for pricing with respect to payments made by Garden City to the Related Companies. That representation was untrue. Later, when the Bureau asked for the valuation, nothing was provided, misleading the Bureau as to the valuation’s existence. In fact, no written valuation existed. Clearly, Mr. Swallow’s representation was untruthful.

The valuation opinion was necessary to carry out the state’s policies relating to licensing and control of gambling. (See Bus. & Prof. Code, § 19866.) The Related Companies were not licensed; millions of dollars were flowing from Garden City to them; and Mr. Swallow represented that an accountant’s written opinion established how much was to be paid to the Related Companies. Mr. Swallow’s untrue statement about the very existence of an opinion was material to qualification because it showed his lack of honesty and integrity. (Bus. & Prof. Code, § 19857, subd. (a).) Mr. Swallow’s untrue statement was material to qualification because it related to business practices, whether they posed a threat to the effective regulation and control of controlled gambling, and whether the practices created or enhanced unsuitable or illegal methods in carrying on the business and financial arrangements incidental to controlled gambling. (Bus. & Prof. Code, § 19857, subd. (b).) Full and true disclosure is the foundation of effective gambling regulation.

¹⁹ Mr. Swallow testified that no written opinion existed. (I RT 63:10-12.)

1 **2. Mr. Swallow Was Untruthful or Misleading About his Marital Status.**

2 Mr. Swallow stated in an application submitted to the Commission and the Bureau in
3 August 2012 that he was separated from Mrs. Swallow. He later stated that they were separated
4 in 2009. Thereafter, he stated that the Swallows were separated effective January 2010. In
5 truth, they were not legally separated, nor were they separated in fact. The evidence shows that
6 Mr. Swallow was untruthful or misleading about his marital status:

- 7 • On or about January 18, 2012, Mr. Swallow filed a supplemental application
8 relating to Garden City in which he reported his marital status as married. (Exh.
9 4, p. 4-2.)
- 10 • On or about February 13, 2012, Mr. Swallow signed an application for the City
11 of San Jose in which he reported his marital status as married. (Exh. 44, p. 44-
12 4.)
- 13 • In August 2012, Mr. Swallow filed an application relating to Hollywood Park
14 Casino in which he reported his marital status as separated. (Exh. 6, p. 6-6.)
- 15 • By letter dated July 10, 2013, Mr. Swallow's attorneys wrote that he and Mrs.
16 Swallow "have been separated since approximately 2009." (Exh. 10, p. 10-1.)
- 17 • Mr. Swallow's attorneys continued: "Mr. Swallow and [Mrs.] Swallow have not
18 engaged in a legal separation or formal divorce proceedings due to concerns
19 regarding the effect a divorce or legal separation could have on their three minor,
20 dependent children." (Exh. 10, p. 10-1.)
- 21 • In response to the Bureau's inquiry, Mr. Swallow wrote that "[t]he Swallows
22 consider themselves separated effective approximately January of 2010." (Exh.
23 7, p. 7-2 [Response to Request No. 15].)
- 24 • On October 9, 2013, Mrs. Swallow filed a Petition for Dissolution of Marriage in
25 Los Angeles Superior Court in which she declared under penalty of perjury that
26 the Swallows were separated on October 8, 2013. (Exh. 16, p. 16-1.)

- 1 • On December 16, 2013, Mr. Swallow filed a Response-Dissolution of Marriage
2 in Los Angeles Superior Court in which he declared under penalty of perjury that
3 the Swallows were separated on October 8, 2013. (Exh. 17, p. 17-1.)
- 4 • In 2009, the Swallows moved from California to Nevada. In Nevada, they lived
5 in the same house. (I RT 128:7-129:10).)
- 6 • In 2013, the Swallows moved from Nevada to California. After the move, they
7 lived in the same house. (See Exh. 7, p. 2 [Responses to Request Nos. 12 &
8 15].)
- 9 • On February 22, 2010, Secure Stone was formed. Either Mr. or Mrs. Swallow
10 engaged Paracorp to form Secure Stone. (I RT 189:14-18.)
- 11 • Mr. Swallow testified that Secure Stone was one of “my companies” and one of
12 his “affiliated companies.” (VI RT 191:24-192:1; VII RT 31:1-4.)
- 13 • The Secure Stone Agreement was effective May 1, 2010. (Exh. 29, p. 29-1.)
14 Mr. Swallow participated in reaching the Secure Stone Agreement, including
15 discussing pricing with Mr. Gustin. (II RT 71:14-72:6.)
- 16 • The monies received by Secure Stone were viewed by Mrs. Swallow as
17 community property. (Exh. 56, p. DM-144:22-145:13.)
- 18 • Mr. Swallow used monies from Secure Stone to pay Bryan Roberts. (VII RT
19 30:21-31:6; VI RT 191:12-192:2; Exh. 49, pp. 49-19 to 49-20.)
- 20 • Mr. Swallow handled the receipt of monies for Secure Stone from Team View
21 Associates. (Exh. 56, p. DM-74:12-24.)
- 22 • Mrs. Swallow signed multiple documents in connection with financing provided
23 by Comerica Bank after the represented 2010 separation. (E.g., Exh. 51, pp. 51-
24 57 [signed p. 51-63], 51-70 [signed p. 51-78], 51-95 [signed p. 51-99].)
- 25 • Mr. Swallow testified that he and Mrs. Swallow had not been separated at all
26 times since approximately 2009. (I RT 134:12-135:18.)
- 27 • Mr. Swallow testified that he and Mrs. Swallow had not considered themselves
28 separated effective January 2010. (I RT 135:20-136:9, 137:1-21.)

1 In sum, Mr. Swallow told the Bureau that the Swallows were separated effective
2 January 2010. The evidence belies that. The Swallows set up Secure Stone in February 2010
3 and, later, worked together to receive \$3.6 million. Mrs. Swallow put her assets, and those of
4 the Swallow Trust, at risk in connection with loans for the 1887 Matrix Boulevard project in
5 March 2011 and afterwards. And in early 2012, Mr. Swallow represented to state and San Jose
6 regulators that he was married. Clearly, Mr. Swallow was untruthful, or misleading, about his
7 marital status.

8 Knowing the truth about Mr. Swallow's marital status was necessary to carry out the
9 state's policies relating to licensing and control of gambling. (See Bus. & Prof. Code, § 19866.)
10 Mrs. Swallow was not licensed, yet money traceable to gambling operations was flowing to her
11 through Secure Stone. Additionally, the Swallow Trust had an interest in Dolchee. Mr.
12 Swallow's untrue statements about his marital status were material to qualification because they
13 showed his lack of honesty and integrity. (Bus. & Prof. Code, § 19857, subd. (a).) Mr.
14 Swallow's untrue statements were material to qualification because they potentially would
15 cause regulators not to look to the depth of his and his wife's intertwined business dealings.
16 The untrue statements thus posed a threat to the effective regulation and control of controlled
17 gambling, and whether his practices created or enhanced unsuitable or illegal methods in
18 carrying on the business and financial arrangements incidental to controlled gambling. (Bus. &
19 Prof. Code, § 19857, subd. (b).) As stated above, full and true disclosure is the foundation of
20 effective gambling regulation.

21 **3. Mr. Swallow Was Untruthful About Secure Stone Payments Received in 2011**

22 Through an agent, Mr. Swallow represented to the Bureau that certain income exceeding
23 \$1.4 million from Secure Stone that appeared on Mrs. Swallow's 2011 tax return related to the
24 sale of her dental practice. In truth, the income traced to prohibited payments that came
25 indirectly from Team View Player Services. The evidence shows:

- 26 • Mr. Swallow provided the Bureau with a 2011 tax return for Mrs. Swallow.
27 (Exh. 31; see also Exh. 54, pp. 54-2 to 54-3; IV RT 91:10-92.:2.)
28

- 1 • That 2011 tax return showed significant royalty income from Secure Stone.
2 (Exh. 54, p. 2.)
- 3 • The Bureau made inquiry and was told that the Secure Stone income arose from
4 the sale of Mrs. Swallow's dental practice. (Exhs 32 & 33; see also Exh. 54, p.
5 54-3; IV RT 88:17-25, 89:19-90:3.)
- 6 • On January 3, 2013, a Bureau auditor reported that Mrs. Swallow had \$1.4
7 million of royalty income from the sale of her dental practice. (Exh. 30, p. 30-
8 12; see also Exh. 54, p. 54-2; IV RT 87:18-88:5.)
- 9 • On July 10, 2013, Mr. Swallow's attorneys wrote that Mrs. Swallow had used a
10 "number of custom software applications, some of which were developed by
11 Bryan Robertson"²⁰ in connection with her dental practice. (Exh. 10, p. 10-2.)
- 12 • Bryan Roberts declared that he "never worked with Deborah Swallow in
13 connection with her dental practice or any other project." (Exh. 45, p. 5, lns. 23-
14 24.)
- 15 • Team View Associates entered into the Secure Stone Agreement with Secure
16 Stone. (Exh. 29.) That agreement's effective date was May 1, 2010. (*Id.* at p.
17 29-1.) Under the Secure Stone Agreement, Team View Associates was to pay
18 \$2,342,839 as a two-year fee. (*Id.* at p. 29-16.)
- 19 • Mr. Swallow participated in reaching the Secure Stone Agreement, including
20 discussing pricing with Mr. Gustin. (II RT 71:14-72:6.)
- 21 • On July 10, 2013, Mr. Swallow's attorneys wrote that Secure Stone's only
22 source of income was the Secure Stone Agreement. (Exh. 10, p. 10-2.)
- 23 • Mr. Swallow's attorneys further wrote: "Secure Stone, LLC receives income
24 from its agreement with Team View. As a single member LLC, revenue from
25 Secure Stone, LLC would flow through to [Mrs.] Swallow." (Exh. 10, p. 10-3.)
26

27 ²⁰ In response to the Bureau's inquiries regarding "Bryan Robertson," Mr. Swallow provided
28 information for Bryan Roberts. (Exh. 7, p. 9 [Responses to Nos. 60 and 61].)

- 1 • Mr. Swallow used monies from Secure Stone to pay Bryan Roberts. (VII RT
- 2 30:21-31:6; VI RT 191:12-192:2; Exh. 49, pp. 49-19 to 49-20.)
- 3 • Mr. Swallow handled the receipt of monies for Secure Stone from Team View
- 4 Associates. (Exh. 56, p. DM-74:12-24.)
- 5 • Mr. Swallow testified that Secure Stone was one of “my companies” and one of
- 6 his “affiliated companies.” (VI RT 191:24-192:1; VII RT 31:1-4.)
- 7 • On direct examination, Mr. Swallow testified with respect to the Secure Stone
- 8 banking software: “I was proud of the software that we wrote, and what it did.”
- 9 (VI RT 189:9-14.)

10 In sum, in late 2012, Mr. Swallow’s agent told the Bureau that payments to Secure
11 Stone arose from the sale of Mrs. Swallow’s dental practice. Mr. Swallow’s agents also
12 represented to the Bureau that Mr. Roberts had provided services to Mrs. Swallow in her dental
13 practice. Mr. Swallow was involved in the Secure Stone Agreement’s formation and
14 implementation. Any statement that the Secure Stone payments arose from the sale of Mrs.
15 Swallow’s dental practice was untrue, and known by Mr. Swallow to be untrue.

16 Knowing the truth about the prohibited payments was necessary to carry out the state’s
17 policies relating to licensing and control of gambling. (See Bus. & Prof. Code, § 19866.) Mrs.
18 Swallow was not licensed; money was flowing to both her and Mr. Swallow through Secure
19 Stone; and Mr. Swallow had an indirect interest in Secure Stone. Mr. Swallow’s untrue
20 statement about the prohibited payments was material to qualification because it showed his
21 lack of honesty and integrity. (Bus. & Prof. Code, § 19857, subd. (a).) Mr. Swallow’s untrue
22 statement was material to his qualification because it potentially would cause regulators not to
23 examine the true facts regarding Secure Stone and the depth of his and his wife’s intertwined
24 business dealings. The untrue statement thus posed a threat to the effective regulation and
25 control of controlled gambling, and whether his practices created or enhanced unsuitable or
26 illegal methods in carrying on the business and financial arrangements incidental to controlled
27 gambling. (Bus. & Prof. Code, § 19857, subd. (b).)

1 **4. Mr. Swallow Was Untruthful About the Interrelationship Between his and Mrs.**
2 **Swallow's Business Affairs and her Interest in Garden City**

3 Mr. Swallow's attorneys represented to the Bureau that Mrs. Swallow had "no interest
4 in Casino M8trix" and that her business affairs were independent of Mr. Swallow's. In truth,
5 her business affairs were not independent of his, and she had an interest in Casino M8trix. The
6 evidence shows:

- 7 • By letter dated July 10, 2013, Mr. Swallow's attorneys wrote: "Please note that
8 [Mrs.] Swallow's business affairs are independent of Mr. Swallow." (Exh. 10, p.
9 10-1.)
- 10 • Mr. Swallow's attorneys continued: "[Mrs.] Swallow has no interest in Casino
11 M8trix or Hollywood Park Casino. With the exception of the fact that [the] two
12 remain legally married, the suitability of Mr. Swallow should not be influenced
13 by [Mrs.] Swallow." (Exh. 10, p. 10-1.)
- 14 • The Bureau requested a listing of assets held by the Swallow Trust. (V RT
15 79:21-80:8.) In response, Mr. Swallow provided a list that did not include
16 Dolchee.²¹ (*Ibid.*; Exh. 19.)
- 17 • On July 17, 2008, the Lunardis and the Swallows signed a Buy-Sell Agreement,
18 which provided, in part: "Eric Swallow and Pete V. Lunardi, III actively manage
19 the business of [Garden City]. Each of them performs approximately half of the
20 overall work. If Eric were to die or become incapacitated, then his wife Deborah
21 would take his place." (Exh. 38, p. 38-5.) That Buy-Sell Agreement still is in
22 effect. (III RT 121:19-20.) Accordingly, Mrs. Swallow could step in on "their
23 side of the 50 percent." (*Id.* at 122:8-11.)
- 24 • On September 2, 2009, Mr. Swallow, through Profitable Casino, wrote a check
25 for \$650,000 to Mrs. Swallow. (Exh. 41, p. 41-4.)

26 ²¹ This list also did not include Airport Opportunity. As set forth above, despite Mr. Swallow's
27 2013 confirmation to the Bureau that Airport Opportunity's members included the Swallow
28 Trust, documents exist for the ostensible change of the trust's membership interest to Mr.
 Swallow's name. (Exhs. EJ & BO.)

- 1 • Between May 5, 2009, and November 15, 2010, at least \$3.25 million was
2 distributed by Dolchee to the Swallow Trust of which Mrs. Swallow was a
3 trustee. (Exh. 45, pp. 45-3 to 45-4.)
- 4 • Dolchee's members are the Swallow Trust and the Lunardi Trust. (Exh. 34, p.
5 34-17.) Both Mr. and Mrs. Swallow signed the Dolchee operating agreement on
6 behalf of the Swallow Trust.²² (Exh. 34, p. 34-16.)
- 7 • Both Mr. and Mrs. Swallow, as the Swallow Trust's trustees, confirmed and
8 certified to Comerica Bank that they were members of Dolchee.²³ (Exh. 51, p.
9 51-138 [signed p. 51-140].)
- 10 • Mr. Lunardi testified that he was not aware of any Dolchee operating agreement
11 other than that signed by the Swallow Trust. (III RT 109:25-110:8.)
- 12 • Mr. Bellotti testified that he provided the Dolchee operating agreement signed by
13 the Swallow Trust in response to Complainant's subpoena duces tecum in
14 August 2014. (VI RT 72:18-21.)
- 15 • Mr. Bellotti testified that he provided the Dolchee operating agreement signed by
16 the Swallow Trust to the United States Internal Revenue Service in 2014. (VI
17 RT 73:6-11.)
- 18 • As set forth above, between January 1, 2009, and December 31, 2012, Garden
19 City paid Dolchee approximately \$38.5 million. (See also Exh. 1, p. 1-27.)
- 20 • Mr. Lunardi testified repeatedly that the payments to the Related Companies,
21 including Dolchee, were distributions to Garden City's shareholders. ((E.g., III
22 RT 96:7-13, 106:9-23; 103:18-104:4.))²⁴

23 ²² On multiple occasions, Mr. Swallow falsely represented to the Bureau that he and Mr.
24 Lunardi were Dolchee's owners. (See Exh. 4, p. 4-17; Exh. 6, p. 6-33; Exh. 24.)

25 ²³ Mr. and Mrs. Swallow signed a similar document with respect to Airport Opportunity. (Exh.
26 51, p. 51-142 [signed p. 51-144].) That document was signed as of March 11, 2011, and the
 ostensible change in Airport Opportunity's membership occurred around March 30, 2011.
 (Compare Exh. 51, p. 51-142 with Exh. EJ.)

27 ²⁴ In his March 20, 2014 interview, Deven Kumar, in effect, said that the payments by Garden
28 City to the Related Companies were distributions. (Exh. BB1, pp. BB1-33 to BB1-34.)

- 1 • In 2007, the Swallow Trust guaranteed Garden City's indebtedness to Comerica
2 Bank. (Exh. 51, p. 51-3 [signed p. 51-9].)
- 3 • Mrs. Swallow, individually and as a Swallow Trust trustee, signed stock pledge
4 agreements in favor of Comerica Bank. (Exh. 51, pp. 51-13 [signed p. 51-20],
5 51-125 [signed p. 51-136].)
- 6 • In connection with the 1887 Matrix Boulevard project, Mrs. Swallow signed
7 multiple documents obligating the Swallow Trust to repay Comerica Bank.
8 (E.g., Exh. 51, pp. 51-57 [signed p. 51-63], 51-70 [signed p. 51-78], 51-95
9 [signed p. 51-99].)
- 10 • In April 2013, Mrs. Swallow signed an amendment to and affirmation of
11 guaranties for Comerica Bank. (Exh. 51, p. 51-86 [signed p. 51-89].)
- 12 • Mrs. Swallow's personal property is listed as collateral on a UCC Financing
13 Statement filed by Comerica Bank with the Nevada Secretary of State. (Exh. 51,
14 p. 51-146; see also Exh. 18, pp. 18-13 to 18-18.)
- 15 • On February 22, 2010, the Operating Agreement for Secure Stone, LLC was
16 executed by Mrs. Swallow, as its only member. (Exh. BP, p. BP-14.)
17 Nonetheless, Mr. Swallow testified that Secure Stone was one of "my
18 companies" and one of his "affiliated companies." (VI RT 191:24-192:1; VII
19 RT 31:1-4.)
- 20 • Mr. Swallow participated in reaching the Secure Stone Agreement, including
21 discussing pricing with Mr. Gustin. (II RT 41:14-72:6.)
- 22 • Mr. Swallow handled the receipt of monies for Secure Stone from Team View
23 Associates. (Exh. 56, p. DM-74:12-24.)
- 24 • Team View Associates paid nearly \$3.6 million to Secure Stone. (Exh. 7, p. 7-
25 543; see also Exh. 25, p. 25-4, Exh. 53, p. 53-3.) The monies received by Secure
26 Stone were viewed by Mrs. Swallow as community property. (Exh. 56, DM-
27 144:22-145:13.)
28

1 In sum, Mr. Swallow told the Bureau that his and Mrs. Swallow's business affairs were
2 separate. He told the Bureau that she had no interest in Garden City. The evidence shows that
3 was untrue. Additionally, the evidence shows that Mr. Swallow provided a false listing of
4 Swallow Trust assets to the Bureau. Mrs. Swallow had a potential right to co-manage Garden
5 City. She was a trustee of the Swallow Trust, which guaranteed Comerica Bank's loans to
6 acquire Garden City and for the 1887 Matrix Boulevard project. The Swallow Trust's assets
7 secured Comerica Bank's loans. The Swallow Trust also was a 50-percent member of Dolchee,
8 which received tens of millions of dollars in distributions from Garden City. The Swallows
9 worked together in setting up Secure Stone, reaching the Secure Stone Agreement, and
10 collecting monies under that agreement. Any statement that Mrs. Swallow's business affairs
11 were separate from Mr. Swallow's, and that she had no interest in Garden City, was untrue.

12 Knowing the truth about the interrelationship between Mr. and Mrs. Swallow's business
13 affairs and her interest in Garden City was necessary to carry out the state's policies relating to
14 licensing and control of gambling. (See Bus. & Prof. Code, § 19866.) Mrs. Swallow was not
15 licensed; millions of dollars were flowing to both her and him through Secure Stone and to the
16 Swallow Trust through Dolchee; and Mrs. Swallow potentially had a 50-percent management
17 right in Garden City. Mr. Swallow's untrue statement about the interrelationship between his
18 and Mrs. Swallow's business affairs was material to qualification because it showed his lack of
19 honesty and integrity. (Bus. & Prof. Code, § 19857, subd. (a).) Mr. Swallow's untrue
20 statement was material to qualification because it potentially would cause regulators not to look
21 to the depth of his and his wife's interrelated business dealings, Dolchee's true ownership, or
22 the relationships underlying Secure Stone. The untrue statement thus posed a threat to the
23 effective regulation and control of controlled gambling, and whether his practices created or
24 enhanced unsuitable or illegal methods in carrying on the business and financial arrangements
25 incidental to controlled gambling. (Bus. & Prof. Code, § 19857, subd. (b).)

26 **5. Mr. Swallow Was Untruthful About What Dolchee Provided to Garden City**

27 Mr. Swallow stated to the Bureau and the Commission that Dolchee provided table
28 games and gaming analytical software to Garden City. In truth, no evidence supports Mr.

1 Swallow's statements that Dolchee provided gaming analytical software to Garden City.

2 Instead, the evidence shows that Mr. Swallow's statements were untrue regarding what Dolchee
3 provided to Garden City:

- 4 • At the April 18, 2013 Commission meeting, Mr. Swallow stated: "So there are
5 two parts of Dulchee [sic], there is the gaming, licensing of the game, and then
6 there is the technology that only we use at Garden City or Casino Matrix." (Exh.
7 9, p. 9-133.)²⁵
- 8 • Mr. Swallow later provided the Bureau with a report (GT Report) from Grant
9 Thornton LLP (Grant Thornton). The GT Report represented, among other
10 things, that Grant Thornton had valued the Dolchee gaming analytical software.
11 (Exh. 20, p. 20-6.)
- 12 • Mr. Swallow testified that only he, Scott Hayden,²⁶ and Mr. Lunardi had access
13 to reports generated by the Dolchee gaming analytical software. (VI RT 175:4-
14 6.)
- 15 • Mr. Lunardi testified that he knew nothing, and never heard, of the Dolchee
16 gaming analytical software. (III RT 100:5-10.) Mr. Lunardi has been Garden
17 City's president since the Swallow-Lunardi ownership took over operations. (*Id.*
18 at 78:22-24.) The Lunardi Trust is a Dolchee member. (Exh. 34, p. 34-17.) Mr.
19 Lunardi is one of Dolchee's managers, along with Mr. Swallow. (Exh. 34, p. 34-
20 18.)

21
22
23 ²⁵ At the April 18, 2013 Commission meeting, Mr. Swallow also led the Commission and the
24 Bureau to believe that the claimed-to-exist software was patented. (Exh. 9, pp. 9-136 to 9-137.)
Mr. Swallow testified that the software was not patented. (I RT 90:5-11.)

25 ²⁶ Mr. Hayden was Garden City's general manager. He did not testify, nor was any affidavit in
26 lieu of live testimony offered for him. The evidence shows that through affiliated companies,
27 Mr. Hayden received prohibited indirect payments from Garden City's third-party provider of
28 proposition player services. (Bus. & Prof. Code, § 19984, subd. (a).) As general manager, he
fell within the Act's definition of "house." (Bus. & Prof. Code, § 19805, subd. (t).) His
affiliates received payments from Team View Associates. (Exh. 25, pp. 25-5 [Responses to
nos. 17 & 19] & 25-7 to 25-8 [Responses to nos. 27 & 29]; Exh. 53, pp. 53-3 to 53-4.)

- 1 • At the February 21, 2013 Commission meeting, Mr. Swallow was asked what
2 Dolchee did. He stated: “So we have a patent on a game. We developed a
3 baccarat game that we use at our facility.” (Exh. 8, p. 8-72.) He said nothing
4 about the claimed gaming analytical software.
- 5 • At the February 21, 2013 Commission meeting and in response to additional
6 questioning regarding Garden City paying \$5 million per year, Mr. Swallow
7 stated “we have blackjack,^[27] we have - -.” He agreed that Dolchee had a
8 portfolio of proprietary games. (Exh. 8, pp. 8-72 to 8-73.) He said nothing
9 about the claimed gaming analytical software.
- 10 • Effective January 1, 2009, Dolchee and Garden City entered into a License
11 Agreement (Dolchee-Garden City Agreement). (Exh. 7, p. 7-460.) That
12 agreement provided that Dolchee granted Garden City a license to play certain
13 denominated card games. (*Ibid.*) The Dolchee-Garden City Agreement set a
14 monthly licensing fee to play the licensed games of no less than \$400,000. (*Id.*
15 at p. 7-461.) The agreement contained no mention of, or provision for, gaming
16 analytical software. (I RT 111:20-24.)
- 17 • In its investigation, the Bureau requested Mr. Swallow to state the total amount
18 of payments made to Dolchee by Garden City from January 1, 2010, to June 30,
19 2013. (Exh. 7, p. 7-13 [Request Nos. 86 & 87].) The Bureau further requested:
20 “Please state the reasons for the payments and amounts of any payments that
21 were not made under the terms of the [Dolchee-Garden City Agreement].”
22 (*Ibid.*) Mr. Swallow provided no reasons. (*Ibid.*) Thus, the payments were for
23 the play of certain denominated card games. (Exh. 7, pp. 7-460 to 7-461.)
- 24 • In its investigation, the Bureau requested Mr. Swallow to provide a listing of
25 contracts for Garden City. (V RT 38:2-11.) The listing submitted in response

26
27 ²⁷ The evidence is clear that Dolchee did not have, or provide, any blackjack game. Mr.
28 Swallow thus was untruthful to the Commission and demonstrated his lack of honesty and
 integrity.

1 reported an \$800,000 monthly payment to Dolchee for “gaming royalty/fees.”
2 (Exh. 21.)

- 3 • Josh Mendiola, Garden City’s IT or MIS Administrator, testified that he knew
4 nothing, and never heard, of the Dolchee gaming analytical software. (III RT
5 76:7-16.)
- 6 • On March 20, 2014, Deven Kumar, Garden City’s chief financial officer, stated
7 in an interview conducted by the Bureau that Dolchee was paid a royalty just for
8 games. (Exh. BB1, p. BB1-25.)
- 9 • In a letter dated March 19, 2013, Mr. Bellotti wrote to the Bureau that certain
10 software developed by Mr. Swallow resulted in cost savings to Garden City and
11 was transferred to Profitable Casino. (Exh. EX.) The letter contains no mention
12 of Dolchee gaming analytical software.
- 13 • At the April 18, 2013 Commission meeting, when asked whether Garden City
14 paid \$11.8 million to Dolchee for the licensing of games, Mr. Bellotti responded,
15 “That’s correct.” (Exh. 9, p. 9-84.)
- 16 • In audited financial statements for each year between 2009 through 2013, Mr.
17 Bellotti wrote that Dolchee “grants Garden City a non-exclusive license to play
18 the ‘licensed game’ at their facility.” He then described the payments to Dolchee
19 as licensed game fees. (Exh. 12, p. 12-14 [2009]; Exh. 13, p. 13-14 [2010]; Exh.
20 14, p. 14-12 [2011]; Exh. 15, p. 15-13 [2012]; Exh. AW, p. AW-14 [2013].)²⁸
- 21 • In connection with its investigation, the Bureau conducted an onsite visit of
22 Casino M8trix. During that visit, the Bureau inquired about software used by
23 Garden City, and no mention was made of gaming analytical software. (V RT
24

25
26 ²⁸ Mr. Swallow was a member of Garden City’s audit committee. (I RT 76:23-24.) Despite his
27 knowledge that Garden City was required to provide full and true disclosure to the Bureau and
28 the Commission, Mr. Swallow never made any effort to correct how the Dolchee payments
were reported in Garden City’s annual audited financial statements. This further evidences that
the claimed Dolchee gaming analytical software did not exist.

1 45:4-10.) The Bureau concluded that no gaming analytical software existed.

2 (*Id.* at 85:1-10.)

3 In sum, other than Mr. Swallow's unsubstantiated statements, no evidence of the
4 claimed Dolchee gaming analytical software was presented at the hearing. The evidence is
5 overwhelming that the gaming analytical software did not exist. Other than Mr. Swallow, no
6 witness knew of the gaming analytical software's existence. Garden City's accountant
7 continuously reported Dolchee as providing games. Both Garden City's accountant and chief
8 financial officer represented to the Bureau that Dolchee was paid royalty fees for providing
9 games. The Dolchee-Garden City Agreement pertained to games, and games only. Clearly,
10 any statement that Dolchee provided anything other than certain games to Garden City was
11 untrue.

12 Knowing the truth about what Dolchee provided Garden City was necessary to carry out
13 the state's policies relating to licensing and control of gambling. (See Bus. & Prof. Code, §
14 19866.) Dolchee was not licensed; millions of dollars were flowing to it from Garden City;
15 those payments were not invoiced and substantially exceeded the Dolchee-Garden City
16 Agreement; and Mr. Swallow had represented falsely that an accountant's written opinion
17 established how much was paid. Mr. Swallow's untrue statements about what Dolchee
18 provided were material to qualification because they showed his lack of honesty and integrity.
19 (Bus. & Prof. Code, § 19857, subd. (a).) Mr. Swallow's untrue statements were material to
20 qualification because they potentially would deter regulators from examining whether Dolchee,
21 as an unlicensed entity, was unlawfully sharing in the monies made by Garden City for
22 operating a card room. (Pen. Code, § 337j, subd. (a)(2).) The untrue statements thus posed a
23 threat to the effective regulation and control of controlled gambling, and whether Mr.
24 Swallow's business practices created or enhanced unsuitable or illegal methods of carrying on
25 the business and financial arrangements incidental to controlled gambling. (Bus. & Prof. Code,
26 § 19857, subd. (b).)

1 **6. Mr. Swallow Provided a False and Misleading Valuation from Grant Thornton**
2 **LLP**

3 At its April 18, 2013 meeting, the Commission directed Mr. Swallow to “provide to the
4 Bureau . . . a valuation and analysis by an independent company of the commodities and/or
5 services provided as it relates to the gaming license agreements between Garden City . . . and
6 Dolchee . . . and software agreements with Profitable Casino” (Exh. AF, p. AF-3.) Mr.
7 Swallow provided the GT Report. (Exh. 20.) That report was false and misleading. The
8 evidence shows:

- 9 • The GT Report recites that Mr. Swallow will use the report for compliance
10 purposes with the Commission. (Exh. 20, p. 20-2.)
- 11 • The GT Report recites that its based “on the information provided by [Casino
12 M8trix] and Mr. Swallow.” (Exh. 20, p. 20-2.)
- 13 • Grant Thornton accepted information provided by Mr. Swallow and others
14 without any verification.²⁹ (Exh. 20, p. 20-13.)
- 15 • The GT report assumed for valuation purposes that: “a[nother] company would
16 license the right to incorporate and utilize the Dolchee Games In return, that
17 company would pay a royalty rate *based on the percentage of revenue* earned
18 through the use of the licensed games.” (Exh. 20, p. 20-8, italics added.)
- 19 • In California, any person who receives payments based on a percentage of
20 gaming revenues has to be licensed. Vendors providing or licensing table games
21 in California charge a per table licensing fee or lease payment. (Exh. 53, p. 53-5,
22 ¶ 12.)
- 23 • The GT Report reports that, “[a]ccording to Management,” Garden City paid
24 Shuffle Master to gain access to Pai Gow Poker and Ultimate Texas Hold’em

25
26 ²⁹ Grant Thornton marked each Dolchee game with a trademark symbol, implying that the game
27 was protected. (Exh. 20, p. 20-8.) In truth, only Baccarat Gold was protected by either
28 trademark or patent. (I RT 112:11-20; see also Exh. 7, pp. 7-10 [Response to Request No. 70]
 & 7-448.)

1 games, “which are then turned over to Dolche LLC for rebranding for Casino
2 M8trix’s use.” (Exh. 20, p. 20-9.)

- 3 • Shuffle Master’s licensing agreements provide: “Any alteration, modification or
4 addition to the game play method or Product without the prior written consent of
5 [Shuffle Master] will result in the termination of license granted herein. [Shuffle
6 Master’s intellectual property] shall remain the sole and exclusive property of
7 [Shuffle Master].” (Exh. 50, p. 173, ¶ 6.)
- 8 • Shuffle Master’s licensing agreements also provide: “Customer shall not make
9 any modification to the Product, nor shall it remove or reproduce the
10 Product” (Exh. 50, p. 173, ¶ 8.)
- 11 • Any rebranded Shuffle Master game would have to be approved by the Bureau
12 for play at Garden City. No approval had been requested, or given. (V RT 90:1-
13 11.)
- 14 • Mr. Swallow testified that he understood that any rebranded Shuffle Master
15 game would require the Bureau’s approval before it could be played. (II RT
16 63:18-21.)
- 17 • The GT Report represented that the Dolchee-Garden City Agreement covered
18 certain games. (Exh. 20, p. 20-28, fn. 2.) None of the games listed in the GT
19 Report contained the suffix “Gold.” (Compare *ibid.* with Exh. 7, p. 480.) The
20 only games covered by the Dolchee-Garden City Agreement that had been
21 approved by the Bureau for play at Garden City were Baccarat Gold, Double
22 Hand Poker Bonus Gold, and variants of those games. The Bureau first
23 approved Double Hand Poker Bonus Gold for play at Garden City on September
24 10, 2010. (Exh. 53, pp. 53-7 to 53-8, ¶ 13.)
- 25 • The GT Report purported to value the Dolchee gaming analytical software.
26 (Exh. 20, pp. 20-6 to 20-7, 20-22 to 20-26.) As set forth above, no evidence
27 supports or substantiates Mr. Swallow’s assertion that Dolchee gaming analytical
28 software existed.

- As set forth above, the evidence shows that Garden City paid Dolchee royalties only for licensed games. The following table compares the annual Dolchee royalty payments with those paid to Garden City's other game licensors for 2011 and 2012. (See Exh. 53, pp. 53-8 to 53-9, ¶¶ 14 & 15 [other suppliers' royalties].)

Year	Dolchee ³⁰	Shuffle Master ³¹	Betweiser/TXB Industries ³²
2011	\$11,800,000	\$157,920	\$52,800
2012	\$10,100,000	\$167,106	\$52,800

- Garden City's total revenues from Baccarat and Double Hand Poker in 2011 and 2012 were \$13.9 million (out of \$41.7 million gross gaming revenues) and \$15.4 million (out of \$46.5 million gross gaming revenues) respectively. (Exh. 20, p. 20-28.)
- Baccarat Gold was provided to two other California gambling facilities for \$1,200 per month per table. (Exh. 7, pp. 7-467, 468 [California card room], 7-504, 505 [Tribal casino]; see also Exh. 53, p. 53-7.)
- Ms. Luna Baxter testified that the Bureau was provided with a draft of the GT Report. She also testified that the Bureau expressed concerns about the draft, but those concerns were not addressed in the final GT Report. (V RT 86:2-89:2.) She further testified that the information used for the GT Report was untrue. (V RT 89:12-92:12.)
- Ms. Luna Baxter testified that GT Report's valuation of the Profitable Casino also was untrue. (V RT 93:17-94:14.)

³⁰ The Dolchee royalties are from the GT Report. (Exh. 20, p. 20-31.)

³¹ Yolanda Morrow calculated royalties paid to Shuffle Master. (Exh. 53, pp. 8-9, ¶ 14.)

³² Betweiser and TBX Industries provided blackjack games to Garden City. Their royalties are combined because Grant Thornton did not distinguish between different blackjack games in the GT Report. The annual royalties were \$4,800 for Betweiser and \$48,000 for TBX Industries. (Exh. 53, p. 9, ¶ 15.)

1 In sum, the GT Report was based on false information. That information included,
2 among other things: what Dolchee games were played at Garden City; the rebranding of
3 Shuffle Master games; and the existence of Dolchee analytical software. The royalties paid by
4 Garden City to Dolchee were many times greater than those paid Shuffle Master, Betweiser,
5 and TBX Industries. They were thousands of times greater than royalties paid to Dolchee by
6 Garden City's competitors. Accordingly, the GT Report reached untrue and misleading
7 conclusions. Despite the report's patent deficiencies, Mr. Swallow provided it to the Bureau.

8 A truthful evaluation was necessary to carry out the state's policies relating to licensing
9 and control of gambling. (See Bus. & Prof. Code, § 19866.) The Commission clearly had
10 determined that by directing Mr. Swallow to provide a report. Neither Dolchee nor Profitable
11 Casino was licensed; millions of dollars were flowing from Garden City to them; and Mr.
12 Swallow already had been untruthful about having a written accountant's evaluation that
13 established how much was to be paid to Dolchee and Profitable Casino. That the GT Report
14 was false or misleading showed Mr. Swallow's lack of honesty and integrity because he and his
15 agents had provided the information upon which the report was based. (Bus. & Prof. Code, §
16 19857, subd. (a).) The GT Report's untrue and misleading nature was material to qualification
17 because it related to business practices, whether they posed a threat to the effective regulation
18 and control of controlled gambling, and whether the practices created or enhanced unsuitable or
19 illegal methods in carrying on the business and financial arrangements incidental to controlled
20 gambling. (Bus. & Prof. Code, § 19857, subd. (b).)

21 **7. Mr. Swallow Provided Other Untrue or Misleading Information to the Bureau**

22 Standing alone, each instance of providing untrue or misleading information set forth
23 above is sufficient for mandatory license revocation, and mandatory renewal denial. The
24 evidence also shows:

- 25 • Relying on false information provided by Mr. Swallow and his agents, the GT
26 Report represented that the Dolchee and Profitable Casino intellectual property
27 combined value exceeded \$90 million. (Exh. 20, p. 20-3.) At the April 18, 2013
28 Commission meeting, Mr. Swallow's attorney stated that she had concerns

1 regarding the confidentiality of the Dolchee “gaming technology, as well as the
2 Profitable Casino software technology.” She represented that Mr. Swallow had
3 “taken a lot of measures to ensure to maintain its confidentiality and to license it
4 in a careful manner” (Exh. 9, pp. 9-212 to 9-213.). Mr. Swallow’s attorney
5 later stated, “a number of our competitors are here today, and . . . they’d be
6 getting a free ride learning all about Mr. Swallow’s protected confidential trade
7 secret and proprietary information.” (*Id.* at p. 9-217.) For the reasons set forth
8 above establishing the GT Report’s falsity, the games and software did not have
9 the value represented to the Bureau. Additionally, the total cash investment in
10 developing the Dolchee games was approximately \$15,000. (Exh. 7, p. 7-11
11 [Response to Request No. 73].) No cash was invested in creating, developing,
12 and testing the Profitable Casino software. (*Id.* at pp. 7-9 to 7-10 [Response to
13 Request No. 64].) Mr. Swallow did not treat the games and software as
14 confidential as he had no written nondisclosure, confidentiality, trade secret, or
15 similar agreements. (*Id.* at pp. 7-9 [Response to Request No. 63] & 7-11
16 [Response to Request No. 72].) Mr. Swallow caused untrue information to be
17 provided to the Bureau.

- 18 • During its investigation, the Bureau asked Mr. Swallow to state the reason that
19 Profitable Casino made payments to Bryan Roberts on a monthly basis. Mr.
20 Swallow responded: “Profitable Casino pays Bryan Roberts a fixed monthly
21 development fee to maintain and upgrade software.” (Exh. 7, p. 7-8 [Response
22 to Request No. 57].) Mr. Lunardi testified that Mr. Roberts received monthly
23 fees of \$12,000 from Garden City. (III RT 124:22-25.) Those fees were to
24 service, maintain, work on, update, and improve the Profitable Casino software.
25 (*Id.* at 125:20-126:12.) The amounts paid by Profitable Casino to Mr. Roberts
26 were substantially less. They ranged between \$500 (Exh. 41, pp. 41-9, 41-32) to
27 \$1,000 (e.g., *id.* at pp. 41-9 to 41-12) to \$4,000 (e.g., *id.* at pp. 41-1 to 41-8, 41-
28 21) to \$4,500 (e.g., *id.* at pp. 41-14 to 20). Mr. Swallow’s response was

1 misleading as to the nature of the work performed by Mr. Roberts and how it
2 related to Garden City. Mr. Swallow thus provided misleading information to
3 the Bureau.

4 Knowing the truth about Mr. Swallow's business dealings was necessary to carry out the
5 state's policies relating to licensing and control of gambling. (See Bus. & Prof. Code, § 19866.)
6 He engaged in transactions involving millions of dollars without invoices or written
7 agreements. Mr. Swallow's untrue and misleading statements were material to qualification
8 because they showed his lack of honesty and integrity. (Bus. & Prof. Code, § 19857, subd. (a).)
9 Mr. Swallow's untrue and misleading statements were material to qualification because they
10 involved conduct that disregarded prudent business practices and controls. The untrue and
11 misleading statements thus posed a threat to the effective regulation and control of controlled
12 gambling, and whether Mr. Swallow's business practices created or enhanced unsuitable or
13 illegal methods of carrying on the business and financial arrangements incidental to controlled
14 gambling. (Bus. & Prof. Code, § 19857, subd. (b).)

15 **C. Third Cause for Discipline and Denial of Renewal: Mr. Swallow Failed To Provide**
16 **Information and Documentation Requested by the Bureau's Chief**

17 Complainant's third cause for discipline and denial of renewal is that Mr. Swallow is not
18 suitable for licensure because he failed to provide information and documentation requested by
19 the Bureau's Chief numerous times. (Amended Accusation, pp. 20-22, ¶ 47.) Each instance,
20 standing alone, requires mandatory revocation (see Cal. Code Regs., tit. 4, § 12568, subd. (c)(4)
21 ["shall be subject to revocation"]) and mandatory denial (see Bus. & Prof. Code, § 19859,
22 subds. (a) & (b)³³ ["shall deny"]). When the instances are taken together, mandatory revocation
23 and denial become even more imperative to protect the public health, safety, and welfare and
24 the integrity of the regulatory process.

25
26
27 ³³ Business and Professions Code section 19859, subdivision (b)'s disqualification for failure to
28 provide information and documentation requested by the Chief does not require that the
information or documentation be material to qualification.

1 When the Bureau requests information and documents, it is acting on behalf of the
2 Chief. The evidence shows that Mr. Swallow failed to provide information and documents as
3 follows:

- 4 • The Bureau requested information relating to security or collateral given for each
5 loan made in connection with the acquisition, construction, or improvement of
6 the 1887 Matrix Boulevard project. (Exh. 7, pp. 7-4 to 7-5 [Request No. 30].)
7 Rather than describe the security or collateral, Mr. Swallow produced certain
8 loan documents. (Exh. 7, p. 7-4 [Response to Request No. 30]; Exh. 7, pp. 7-256
9 to 7-339].) Those loan documents were incomplete. Additionally, the Bureau
10 requested: "If any collateral is personal property, please provide a copy of each
11 security agreement and financing statement relating to the collateral." (Exh. 7, p.
12 7-5.) Mr. Swallow did not provide responsive security (e.g., Exh. 51, pp. 51-110
13 to 51-120) or stock pledge (*id.* at pp. 51-125 to 51-137) agreements. (See V RT
14 49:15-51:22.)
- 15 • The Bureau requested certain information regarding monies from the Related
16 Companies used to close the 1887 Matrix Boulevard acquisition. (Exh. 7, p. 7-5
17 [Request No. 32].) Mr. Swallow's response did not respond to the request. (*Id.*
18 at p. 7-5.) Additionally, the Bureau requested: "If the monies provided were
19 anything other than gifts, please provide all documents evidencing or relating to
20 the transactions." (*Ibid.*) No documents were provided. (See V RT 48:12-
21 49:11.)
- 22 • The Bureau asked if any loans entered into in connection with the acquisition,
23 construction, or improvement of the 1887 Matrix Boulevard project were
24 collateralized with or secured by any assets of Garden City. (Exh. 7, p. 7-5
25 [Request No. 35].) The Bureau further requested that Mr. Swallow provide
26 copies of all documents relating to the loans "including, by way of example and
27 not limitation, all security agreements, financing statements, guaranties, and
28 promissory notes entered into, provided, or made by Garden City, Inc." (*Ibid.*)

1 Mr. Swallow responded: "Please see attachment # 30 for *all* loan and
2 collateralization of the project." (*Id.* at p. 7-5, italics added [Response to
3 Request No. 35].) As set forth above, the loan documents provided by Mr.
4 Swallow were incomplete. Importantly, Mr. Swallow did not provide the
5 security agreement that Garden City executed. (Exh. 51, pp. 51-121 to 51-124.)
6 He failed to provide information and documents requested. (V RT 49:23-53:17.)

- 7 • The Bureau requested complete copies of all agreements that existed or were in
8 effect at any time after January 1, 2009, between, among other persons, Bryan
9 Roberts and Mr. Swallow. (Exh. 7, pp. 7-8 to 7-9 [Request No. 58].) Mr.
10 Swallow's response was evasive; he responded: "Profitable Casino LLC and
11 Bryan Roberts entered into oral agreements." (*Id.* at p. 7-8 [Response to Request
12 No. 58].) The evidence shows that an agreement, which provided for automatic
13 renewal, existed. (Exh. 49, pp. 49-8 to 49-14.) Mr. Swallow failed to provide
14 the documents requested. (V RT 59:4-61:8.)
- 15 • The Bureau requested that Mr. Swallow identify each person, entity, or company
16 that provided Garden City with a licensed game between January 1, 2009,
17 through December 31, 2012. (Exh. 7, p. 7-10 [Request No. 69].) With respect to
18 each provider, the Bureau requested specific information including GEGA
19 number and licensing fees paid by year. (*Ibid.*) Mr. Swallow responded by
20 providing a payment schedule and "invoice/agreements." (*Id.* at pp. 7-10, 7-419
21 to 7-447.) Neither the response, the payment schedule, nor the
22 invoice/agreements included GEGA numbers as requested. Moreover, the
23 Shuffle Master information included shuffle machine rentals in addition to game
24 royalty fees. (Exh. 7, p. 7-421.) Mr. Swallow failed to comply with Request No.
25 69. (V RT 53:18-54:9.)
- 26 • The Bureau requested that Mr. Swallow provide specific information for each
27 game that Dolchee licensed to Garden City. (Exh. 7, p. 7-10 [Request No. 70].)
28 Mr. Swallow responded evasively: "Please see attachment # 70 for patent

1 issuance.” (*Id.* at p. 7-10 [Response to Request No. 70].) With the exception of
2 the Baccarat Gold patent, Mr. Swallow did not provide any of the requested
3 information. (V RT 55:5-56:9.)

- 4 • At the February 21, 2013 Commission meeting, Mr. Swallow was directed to
5 provide the Bureau with a copy of the accountant’s valuation that he represented
6 he had. (See Exh. EV, p. EV-3.) Afterwards, the Bureau requested the
7 valuation. Mr. Swallow failed to provide it. Ultimately, as set forth above, Mr.
8 Bellotti told the Commission, and the Bureau, that no written valuation existed.
- 9 • At April 18, 2013 Commission meeting, Mr. Swallow was directed to “provide
10 to the Bureau . . . a valuation and analysis by an independent company of the
11 commodities and/or services provided as it relates to the gaming license
12 agreements between Garden City . . . and Dolchee . . . and software agreements
13 with Profitable Casino” (Exh. AF, p. AF-3.) The Bureau discussed what it
14 required with Mr. Swallow and his agents. Mr. Swallow did not provide what
15 the Bureau requested. Instead, he provided the false and misleading GT Report.

16 In sum, the Chief, through the Bureau, requested information and documents from Mr.
17 Swallow. Rather than comply with the requests, Mr. Swallow failed to provide some or all of
18 the requested information and documents. Those failures violate the Act’s requirement for full
19 and true disclosure. (Bus. & Prof. Code, § 19866.) They also are grounds for mandatory
20 revocation, and denial of renewal, of Mr. Swallow’s state gambling license. (Cal. Code Regs.,
21 tit. 4, § 12568, subd. (c)(4) [revocation]; Bus. & Prof. Code, § 19859, subd. (b) [denial].)

22 **D. Fourth Cause for Discipline and Denial of Renewal: Mr. Swallow Is Unqualified**
23 **for Licensure**

24 Complainant’s fourth cause for discipline and denial of renewal is that Mr. Swallow is
25 not suitable for licensure because he is unqualified under Business and Professions Code
26 section 19857, subdivisions (a) and (b). The evidence shows that he is not a person of good
27 character, honesty, and integrity. The evidence also shows that his activities pose a threat to the
28 effective regulation and control of controlled gambling. The evidence further shows that his

1 activities create or enhance the dangers of unsuitable or illegal practices, methods, and activities
2 in carrying on the business and financial arrangements incidental to controlled gambling.
3 That evidence and Mr. Swallow's acts and omissions establishing his lack of qualification are
4 set forth above. Additionally, the evidence shows that he is unqualified for licensure as
5 follows:

- 6 • Mr. Swallow, directly or through agents, provided untrue or misleading
7 information to the City of San Jose. He, or his agents, told Richard Teng, the
8 Administrator of the City's Division of Gaming Control, that Mr. Swallow and
9 the Lunardis were Dolchee's owners. (II RT 143:13-19.) He, or his agents, told
10 Michael Conroy, who was contracted to conduct investigations for the City, that
11 Mr. Swallow and Mr. Lunardi were Dolchee's owners. (IV RT 49:21-24, 52:5-
12 10.) As set forth above and shown by the evidence, Dolchee's true owners
13 included the Swallow Trust. Mr. Teng testified that knowledge of Dolchee's
14 true ownership was important because unlicensed persons cannot share in a card
15 room's revenues. (II RT 138:9-19, 144:11-19.) Further, Mr. Swallow had an
16 interest in Secure Stone. He paid Bryan Roberts through Secure Stone, along
17 with other affiliated companies. Mr. Conroy interviewed Mr. Roberts in October
18 2013; Mr. Roberts was evasive and refused to answer questions regarding Secure
19 Stone's ownership, management, and income. (IV RT 62:16-25, 66:2-17.) Even
20 though Mr. Swallow was licensed by the City, he had an obligation to make full
21 and true disclosure.³⁴ (II RT 136:19-137:3.) The Act requires that Mr. Swallow
22 comply with local ordinances. (Bus. & Prof. Code, § 19923.)
- 23 • Despite his statutory duty to make full and true disclosure (Bus. & Prof. Code, §
24 19866), Mr. Swallow, directly or through his agents, made untrue or misleading
25

26 ³⁴ Mr. Teng testified that the City's licensing criteria copy the State's. (II RT 131:10-
27 12.) He further testified that the City's immediate disqualification criteria include providing
28 untrue or incomplete information. (*Id.* at 131:24-132:5, 3:24-134:5.) Mr. Teng also testified
that licensees have a continuing requirement to cooperate rather than engage in "catch-me-if-
you-can" conduct. (*Id.* at 136:19-137:3.)

1 statements to the Commission. On February 21, 2013, Mr. Swallow falsely
2 represented to the Commission that he had an accountant's written valuation to
3 support the payments made by Garden City to the Related Companies. On April
4 18, 2013, Mr. Swallow also misled the Commission by agreeing that Dolchee
5 had patented software. (Exh. 9, pp. 9-136 to 9-137.) Further, Mr. Swallow
6 falsely represented to the Commission that Dolchee provided gaming analytical
7 software to Garden City. (*Id.* at p. 9-133.)

- 8 • Mr. Swallow's business practices demonstrate a disregard for prudent business
9 controls and oversight. Transactions involving millions of dollars were
10 conducted without invoices. (See Exh. 7, p. 7-13 [Response to Request No. 84].)
11 Garden City's payments to the Related Parties were based on estimates without
12 regard to the monthly amounts set forth in agreements. (I RT 124:4-17.) The
13 transactions created flows of millions of dollars between Garden City and the
14 Related Companies and between the Related Companies. (Exh. 1, p. 1-27.) As
15 the evidence shows and as detailed above, Mr. Swallow's business practices
16 included an indirect interest in prohibited payments received by Secure Stone
17 from Team View Associates. As the evidence shows and as detailed above, Mr.
18 Swallow facilitated unlicensed persons – i.e., the Swallow Trust and Mrs.
19 Swallow – receiving monies from Garden City's gambling operations.

20 **E. Fifth Cause for Discipline and Denial of Renewal: Mr. Swallow Is Disqualified**
21 **from Licensure**

22 Complainant's fifth cause for discipline and denial of renewal is that Mr. Swallow is not
23 suitable for licensure because he is disqualified under Business and Professions Code section
24 19859, subdivision (a). When the evidence is examined in its entirety, a clear conclusion is that
25 Mr. Swallow has failed to establish his eligibility and qualification for licensure in accordance
26 with the Act. That failure requires mandatory denial of his renewal application. (Bus. & Prof.
27 Code, § 19859, subd. (a).) That failure requires mandatory revocation of his license. (Cal.
28 Code Regs., tit. 4, § 12568, subd. (c)(4).)

1 **THE MAXIMUM FINE POSSIBLE IS NECESSARY TO PROTECT THE PUBLIC**
2 **INTEREST IN FULL AND TRUE DISCLOSURE**
3 **AND THE REGULATORY PROCESS**

4 Here, Mr. Swallow's acts and omissions violated the principles underlying the Act. He
5 did not make full and true disclosure. He shared revenues from a gambling establishment with
6 unlicensed persons. He received prohibited payments. Mr. Swallow did not present any
7 defense, or mitigation, to the substantive violations. In the face of overwhelming evidence that
8 he was untruthful and did not provide information and documents requested by the Bureau,
9 Mr. Swallow testified that he never provided any untruthful information and always provided
10 information and documents requested by the Bureau. (I RT 56:6-58:5.)

11 The Act recognizes that revocation, and denial, alone may not be sufficient to carry out
12 public protection. Therefore, the Act provides:

13 *In addition to any action that the commission may take*
14 *against a license, permit, finding of suitability, or approval, the*
15 *commission may also require the payment of fines and penalties.*
16 *However, no fine imposed shall exceed twenty thousand dollars*
17 *(\$20,000) for each separate violation of any provision of this*
18 *chapter or any regulation adopted thereunder.*

19 (Bus. & Prof. Code, § 19930, subd. (c), italics added.)

20 Not only did Mr. Swallow fail to show any remorse, or offer any mitigation, for his
21 unlawful acts and omissions, but he also stands to reap millions in dollars in profits from losing
22 his license.³⁵ Mr. Park testified that he has an agreement to purchase Mr. Swallow's shares.
23 (III RT 18:24-19:5.) That agreement provides for a \$50 million purchase price plus \$5 million
24 for a five-year noncompetition covenant. (Exh. BX.) Mr. Lunardi testified that the Lunardis
25 had exercised their right of first refusal. (III RT 121:24-122:7, 176:17-24.) In sum, license or
26 no license, Mr. Swallow plans to receive \$55 million in connection with selling his Garden
27 City stock.

28

³⁵ Those monies would be in addition to millions of dollars received from Garden City
through Mr. Swallow's affiliates. (Exh. 1, p. 1-27.)

1 The evidence shows multiple violations of the Act. To protect the regulatory process's
2 integrity and to deter future similar violations by others, each violation requires the maximum
3 fine. That maximum fine is \$20,000 for each separate violation. (Bus. & Prof. Code, § 19930,
4 subd. (c).) The evidence shows no less than 56 separate violations. The maximum fine for
5 those violations is \$1,120,000. (See Appendix A.)

6 Regarding the violations of the Act's duty of full and true disclosure (Bus. & Prof.
7 Code, § 19866), that duty did not end with the initial violation. The duty continued; dishonest
8 or misleading disclosure did not put an end to the duty. (See *Kramer v. Superior Court* (1966)
9 239 Cal.App.2d 500, 502.) Mr. Swallow, however, did nothing to bring the true facts forward
10 or correct his original untrue statements. Therefore, the Judge should conclude, and
11 recommend, that each day that the required disclosure was not made – or an untrue disclosure
12 was not cured – constitutes a separate violation. Those failures exacerbate the deleterious
13 effect of the initial dishonest or misleading disclosure on regulation. (See Cal. Code Regs., tit.
14 4, § 12556 [factors in aggravation].) A fine in the range of \$1,000 to \$5,000 per day is proper.

15 Therefore, Complainant requests a total fine in the range of \$4,659,000 to \$18,815,000,
16 calculated as set forth in Appendix A³⁶ to this closing brief.

17 A fine within the requested range is justified by Mr. Swallow's many violations of the
18 law. A fine in the requested range also is necessary to protect the public interest, and maintain
19 the public trust, that controlled gambling will be free from corruptive elements and will be
20 conducted honestly only by suitable persons. In view of the money to be made in controlled
21 gambling, a fine within the requested range may deter others from similar violations and
22 promote the Act's duty of full and true disclosure and revenue-sharing only with licensed
23 persons.

24
25 ³⁶ The range in Appendix A uses the maximum fine (\$20,000) for each initial violation.
26 For example, eight payments were received by Mr. Swallow, indirectly through Secure Stone
27 (Exh. 7, p. 7-543); each constituted an initial violation of Business and Professions Code
28 section 19984, subdivision (a). Those eight initial violations result in a total fine of \$160,000 at
the maximum rate. Appendix A uses lesser amounts (\$1,000 and \$5,000) applied daily for Mr.
Swallow's failure to cure his multiple violations of Business and Professions Code section
19866.

1 **COST RECOVERY**

2 The Act provides that in any case in which an administrative law judge recommends that
3 the Commission revoke or deny a license, the judge may order the licensee or applicant to pay
4 the Department of Justice the reasonable costs of the investigation and prosecution of the case.
5 (Bus. & Prof. Code, § 19930, subd. (d).) From and after May 14, 2015, the date of the
6 settlement with Garden City and the Lunardis, through August 31, 2015, those costs are
7 \$108,160. (Appendix B.)

8 **CONCLUSION AND REQUESTED RECOMMENDATIONS**

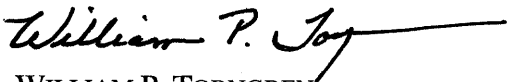
9 For the foregoing reasons, Complainant respectfully requests that the Judge recommend
10 the following to the Commission:

- 11 1. Eric Swallow's state gambling license number GEOW-001330 be revoked;
12 2. Eric Swallow's application to renew state license number GEOW-01330 be
13 denied;
14 3. A fine in the range of \$4,659,000 to \$18,815,000 be imposed; and
15 4. Complainant be reimbursed costs of investigating the matter and prosecuting this
16 proceeding in the amount of \$108,160, plus additional amounts incurred from
17 and after September 1, 2015, as set forth in a supplemental declaration.

18 Dated: September 11, 2015

19 Respectfully submitted,

20 KAMALA D. HARRIS
21 Attorney General of California
22 SARA J. DRAKE
23 Senior Assistant Attorney General

24 
25 WILLIAM P. TORNGREN
26 Deputy Attorney General
27 Attorneys for Complainant Wayne J. Quint, Jr.
28

APPENDIX A

APPENDIX A
FINES TO BE IMPOSED

Section Violated	Conduct	Date of Violation	Date of Cure	Initial Violations	Initial Fine at \$20,000	Failure to Cure at \$1,000	Failure to Cure at \$5,000	Comment
Bus. & Prof. Code, § 19866	Untruthful about accountant's valuation	2/21/13	4/18/13	1	\$20,000	\$55,000	\$275,000	Cure date is Commission meeting
Bus. & Prof. Code, § 19866	Untruthful about marital status	8/30/12	5/2/14	1	\$20,000	\$609,000	\$3,045,000	Accusation is cure date
Bus. & Prof. Code, § 19866	Untruthful about Secure Stone payments received in 2011	1/1/13	7/10/13	1	\$20,000	\$189,000	\$945,000	Exh 10 is cure date
Bus. & Prof. Code, § 19866	Untruthful about interrelationship between the Swallows' business affairs	7/10/13	5/2/14	1	\$20,000	\$295,000	\$1,475,000	Accusation is cure date
Bus. & Prof. Code, § 19866	Untruthful about what Dolchee provided to Garden City	4/18/13	5/2/14	1	\$20,000	\$378,000	\$1,890,000	Accusation is cure date
Bus. & Prof. Code, § 19866	False and misleading valuation from Grant Thornton LLP	8/29/13	5/2/14	1	\$20,000	\$245,000	\$1,225,000	Accusation is cure date
Bus. & Prof. Code, § 19866	Misleading information nature of work performed by Bryan Roberts	8/7/13	5/2/14	1	\$20,000	\$267,000	\$1,335,000	Accusation is cure date
Bus. & Prof. Code, § 19866	Failure to provide information regarding Comerica loans	8/7/13	5/2/14	1	\$20,000	\$267,000	\$1,335,000	Accusation is cure date
Bus. & Prof. Code, § 19866	Failure to provide information regarding Related Company transactions	8/7/13	5/2/14	1	\$20,000	\$267,000	\$1,335,000	Accusation is cure date
Bus. & Prof. Code, § 19866	Failure to provide contract with Bryan Roberts	8/7/13	7/9/15	1	\$20,000	\$700,000	\$3,500,000	Roberts interview is cure date
Bus. & Prof. Code, § 19866	Failure to provide information regarding games licensed at Garden City	8/7/13	5/2/14	1	\$20,000	\$267,000	\$1,335,000	Accusation is cure date
Bus. & Prof. Code, § 19984, subd. (a)	Prohibited payments through Secure Stone	Various	NA	8	\$160,000			Exh. 7, p. 7-543
Pen. Code, § 337j, subd. (a)(2)	Sharing Garden City's revenues with an unlicensed person	Various	NA	37	\$740,000			Exh. 7, p. 7-541

APPENDIX A
FINES TO BE IMPOSED

Totals					\$1,120,000	\$3,539,000	\$17,695,000	

Fine at \$20,000 for initial violation plus \$1,000 daily for failure to cure

\$4,659,000

Fine at \$20,000 for initial violation plus \$5,000 daily for failure to cure

\$18,815,000

APPENDIX B

1 KAMALA D. HARRIS
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Attorneys for the Complainant

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

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

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

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

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

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

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

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

25 **Respondents.**

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

DECLARATION OF WILLIAM P.
TORNGREN

(Cal. Code Regs., tit. 1, § 1042)

1 I, William P. Tornngren, declare:

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

8 2. This declaration is submitted pursuant to California Code of Regulations, title 1,
9 section 1042, in support of Complainant's request for the Department's reasonable costs of
10 investigation and prosecution of the case. The Department requests those costs pursuant to
11 Business and Professions Code section 19930, subdivision (c).

12 3. On May 14, 2015, the California Gambling Control Commission (Commission)
13 approved a settlement with respondents Garden City, Inc., doing business as Casino M8trix,
14 Peter V. Lunardi III, Jeanine L. Lunardi, and the Lunardi Family Living Trust, dated August 27,
15 2008 (collectively, Settling Respondents). A true copy of the Commission's decision and order
16 was admitted in evidence as Exhibit DX. That decision and order provided for Settling
17 Respondents to pay \$275,000 to the Bureau of Gambling Control for its reasonable costs of
18 investigation and prosecution of this case. Settling Respondents paid that sum.

19 4. Complainant's request for costs in this matter is limited to costs from and after
20 May 14, 2015. Those costs relate directly to prosecuting the case against Respondent Eric G.
21 Swallow (Respondent).

22 5. I have reviewed the time records maintained by the Department relating to this
23 case. From and after May 14, 2015, through August 31, 2015, the costs of prosecuting this case
24 total \$108,160. These costs represent 521 hours of attorney time at \$170 per hour and 163.25
25 hours of paralegal time at \$120 per hour. The hours were spent as follows:

- 26 a. Attorney Time: Planning for, preparing for, and attending a continued
27 settlement conference; reviewing Respondent's settlement proposal; analyzing
28 the potential for settlement; discussing possible settlement with Respondent's

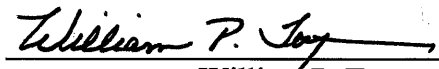
1 attorney, the settlement judge, and Department employees; preparing a
2 prehearing conference statement; planning for, preparing for, and attending the
3 prehearing conference; reviewing and opposing Respondent's motion in limine;
4 supervisory review of pleadings; interviewing witnesses and potential witnesses;
5 preparing declarations in lieu of live testimony; reviewing exhibits; meeting and
6 conferring with Respondent's attorneys; preparing witnesses for hearing;
7 preparing a hearing brief; reviewing Respondent's hearing brief; planning for,
8 preparing for, and participating in the hearing; planning for and preparing to
9 oppose Respondent's motions during the hearing; debriefing Department
10 employees on the hearing and evidence; client communications.

11 b. Paralegal Time: Preparing exhibits for the hearing and to exchange with
12 Respondent; analyzing Respondent's exhibits; arranging to get the exhibits and
13 binders from Sacramento to Oakland and back; preparing for and attending the
14 hearing; assisting counsel throughout the hearing.

15 5. The \$108,160 set forth above does not include time spent in September 2015.
16 Nor does the \$108,160 include the costs incurred in connection with attorney and paralegal
17 lodging during the hearing conducted in Oakland.

18 6. I will submit a supplemental declaration regarding time spent from and after
19 September 1, 2015, for the prosecution of this case. That time will include time spent
20 reviewing the record and planning for and preparing Complainant's closing and reply briefs.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed September 11, 2015, at Sacramento, California.

23
24 
25 William P. Torngren
26
27
28

DECLARATION OF SERVICE BY E-MAIL

I declare:

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

On September 11, 2015, I served the attached **COMPLAINANT'S CLOSING BRIEF** by transmitting a true copy via electronic mail as follows:

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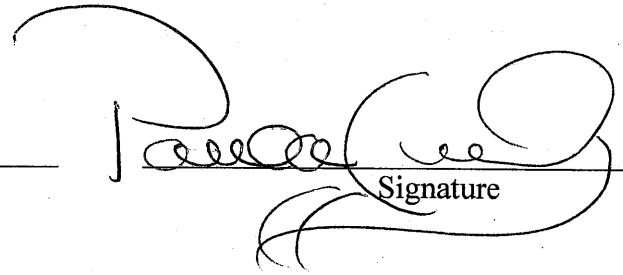
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*Attorneys for Respondent Garden City, Inc., dba
M8trix*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 11, 2015, at Sacramento, California.

Paula Corral
Declarant



Signature