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

14 **In the Matter of the Accusation and**
15 **Statement of Issues Against:**
16 **GARDEN CITY, INC., doing business as**
CASINO M8TRIX (GEGE-000410);
17 **ERIC G. SWALLOW (GEOW-001330);**
18 **PETER V. LUNARDI III (GEOW-001331);**
19 **JEANINE LYNN LUNARDI (GEOW-**
20 **003119); and**
21 **THE LUNARDI FAMILY LIVING**
22 **TRUST, dated August 27, 2008 (GEOW-**
003259).
23 **1887 Matrix Boulevard**
San Jose, CA 95110
24 **Respondents.**

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

FIRST AMENDED ACCUSATION AND
STATEMENT OF ISSUES

(Replacing the Accusation and Statement
of Issues filed on March 27, 2015)

1 Complainant alleges as follows:

2 **PARTIES**

3 1. Wayne J. Quint, Jr. (Complainant) brings this First Amended Accusation and
4 Statement of Issues solely in his official capacity as the Chief of the California Department of
5 Justice, Bureau of Gambling Control (Bureau). It replaces the Accusation and Statement of
6 Issues previously filed with the Office of Administrative Hearings on March 27, 2015.

7 2. At all relevant times, Respondent Garden City, Inc. (Garden City) was a licensed
8 gambling enterprise, California State Gambling License Number GEGE-000410. Garden City
9 does business as Casino M8trix at 1887 Matrix Boulevard in San Jose, California. It is a 49-
10 table card room.

11 3. Respondent Peter V. Lunardi III (Mr. Lunardi), license number GEOW-001331, was
12 a shareholder of Garden City, is a trustee of Respondent Lunardi Family Living Trust, dated
13 August 27, 2008 (Lunardi Trust), and is endorsed on Garden City's license. Respondent
14 Jeanine Lynn Lunardi (Mrs. Lunardi), license number GEOW-003119, also was a shareholder
15 of Garden City, is a trustee of the Lunardi Trust, and is endorsed on Garden City's license. The
16 Lunardis are husband and wife. On August 12, 2010, the California Gambling Control
17 Commission (Commission) approved the transfer of Mr. and Mrs. Lunardis' shares, and issued
18 license number GEOW-003259, to the Lunardi Trust, which then was endorsed on Garden
19 City's license. Collectively, Mr. Lunardi, Mrs. Lunardi, and the Lunardi Trust are referred to as
20 "the Lunardis" in this First Amended Accusation and Statement of Issues.

21 4. Respondent Eric G. Swallow (Respondent or Mr. Swallow), license number GEOW-
22 001330, is a shareholder of Garden City and endorsed on its license. Swallow and the Lunardi
23 Trust each own 50 percent of Garden City's stock and constitute all of its shareholders. On
24 May 29, 2014, the Commission referred Mr. Swallow's license renewal application to an
25 evidentiary hearing. His license was to expire on May 31, 2014; expiration has been stayed,
26 pending the outcome of this matter.

27 5. On May 14, 2015, the Commission approved, and entered, a Stipulated Settlement;
28 Decision and Order that resolved Complainant's causes for discipline against Garden City and

1 the Lunardis (collectively, Settling Respondents).

2 **STATEMENT OF THE CASE**

3 6. This case seeks to discipline Respondent's license – by denial of renewal, revocation,
4 suspension, and/or fine as appropriate – for persistent and repeated violations of, and lack of
5 suitability for continued licensing under, the Gambling Control Act (Act) and the regulations
6 adopted pursuant to the Act. As alleged in this First Amended Accusation and Statement of
7 Issues, Respondent provided untrue and misleading information to the Bureau and others, failed
8 to provide information requested by the Bureau, engaged in self-dealing to siphon off monies
9 for himself to the detriment of others, and benefited from payments prohibited by the Act. The
10 acts and omissions alleged in this First Amended Accusation and Statement of Issues are
11 inimical to the public health, safety, and welfare; those acts and omissions demonstrate that
12 Respondent is not a person of good character, honesty, and integrity. His acts and omissions, as
13 alleged in this First Amended Accusation and Statement of Issues, pose a threat to the effective
14 regulation and control of controlled gambling, and create or enhance the dangers of unsuitable,
15 unfair, or illegal practices, methods, and activities in carrying on the business and financial
16 arrangements incidental to the conduct of controlled gambling. Respondent's acts and
17 omissions not only impeded the Bureau's investigation and fact gathering, but also impeded the
18 City of San Jose's investigation and fact gathering. Respondent is not suitable or qualified for
19 continued licensure. Therefore, his license should be disciplined, and his renewal application
20 should be denied.

21 **FACTUAL BACKGROUND**

22 7. In the past, Settling Respondents and Mr. Swallow operated through a maze of
23 affiliated entities. Money flowed between those entities without documentation or relationship
24 to the value of services provided. This was a standard practice. In response to the Bureau's
25 request for invoices relative to payments involving millions of dollars annually, Mr. Swallow
26 responded:

27 There are no invoices. It has been agreed upon by ownership as
28 standard practice to estimate the annual payment for the year per the

1 agreement and then make monthly payments based on available cash
2 flow to give the Casino [Garden City] operational flexibility.

3 In addition, Respondent's agent has written:

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

7 Exhibit A, which is attached and incorporated by reference, illustrates the maze of affiliated
8 entities and transactions. It also sets forth the flow of funds, as well as certain entities and
9 persons affiliated with or employed by Respondent.

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

20 9. In connection with the Garden City acquisition, Mr. Swallow and Mr. and Mrs.
21 Lunardi received financing from Comerica Bank. That financing has been extended on several
22 occasions. It is secured by Garden City's assets and by the stock acquired by Mr. Swallow and
23 Mr. and Mrs. Lunardi. The initial financing and extensions were not presented to the
24 Commission for review or approval. The initial financing and extensions were not disclosed to
25 the Bureau in connection with Respondent's licensing applications.

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

5 11. On May 25, 2007, Dolchee LLC (Dolchee) was formed as a California limited
6 liability company. At all times since formation and according to its organizational documents,
7 its only members have been the Eric G. and Deborah A. Swallow Family Trust dated August
8 31, 2004 (Swallow Trust) and the Lunardi Trust. The trustees of the Swallow Trust are Mr.
9 Swallow and his wife Deborah. Neither the Swallow Trust nor Deborah Swallow has, or has
10 applied for, a state gambling license.

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

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

1 December 31, 2012, Garden City's payments to Profitable Casino totaled \$14,050,000. Mr.
2 Swallow advised the Bureau that no invoices or similar documents exist with respect to the
3 payments.

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

13 15. Garden City accounted for its payments to Dolchee, Profitable Casino, and Potere
14 (collectively, Related Companies) as expenses, and not as dividends or distributions to its
15 owners. The Lunardis agreed to the organizational and payment structure to accommodate Mr.
16 Swallow's move from California to Nevada. The structure reduced Mr. Swallow's, but not the
17 Lunardis', tax liability to the State of California. As a consequence of expensing those
18 payments, Garden City's net income ranged between approximately minus 0.31 percent and
19 1.42 percent of its gross gaming revenues between January 1, 2009, and December 31, 2012.
20 For three of those four years, Garden City's net income was essentially zero. Other card rooms
21 in California of similar size as Garden City reported net income that averaged approximately 10
22 percent of gross gaming revenues over the same period.

23 16. No invoices exist with respect to the payments to the Related Companies.
24 Respondent and the Lunardis agreed as a standard practice to estimate annual payments to the
25 Related Companies and then make monthly payments based upon available cash flow. None of
26 the Related Companies has, or has applied for, a state gambling license.

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

1 table per month. On June 1, 2009, Dolchee entered into a licensing agreement for Baccarat
2 Gold with a card room other than Garden City. The monthly payment under that licensing
3 agreement is \$1,200 per table per month for a minimum of two tables. On November 17, 2009
4 – 11 months after the effective date of the License Agreement described above in paragraph 12
5 – a patent for Baccarat Gold was issued to Scott Hayden, who was then Garden City’s general
6 manager. Mr. Hayden subsequently assigned the patent to Dolchee for no payment.

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

13 19. On January 20, 2010, Airport Parkway closed an \$8 million real estate purchase.
14 Airport Parkway used approximately \$2 million provided by the Related Companies as a down
15 payment and financed the \$6 million balance with Comerica Bank. No written agreements exist
16 between Airport Parkway, on the one hand, and any of the Related Companies, on the other,
17 with respect to this funding. Documents provided to the City of San Jose report the funds as
18 capital contributions while documents provided to the Bureau report the funds as payments of
19 consulting fees. Subsequently, on March 22, 2011, an additional financing with Comerica Bank
20 closed. The financing is ostensibly secured by, among other things, Garden City’s assets and
21 investment securities of Mr. Swallow, Deborah Swallow, the Swallow Trust, and the Lunardi
22 Trust. Neither the initial nor subsequent financing was presented to the Commission for review
23 or approval.

24 20. The real property was improved with a new eight-story building to house gambling,
25 entertainment, restaurant, meeting, office, and other facilities. The property’s address was
26 changed to 1887 Matrix Boulevard. In April 2012, Garden City and Airport Parkway entered
27 into lease backdated to January 1, 2011, for 1887 Matrix Boulevard. The lease provided for a
28 fixed monthly rent of \$600,797.67 with no escalation over its 10-year term. Pursuant to an

1 Amended Emergency Order issued by Complainant, an independent appraiser established the
2 monthly fair market rent of 1887 Matrix Boulevard as of November 2014 to be \$525,000.

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

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

19 23. On August 7, 2012, Garden City, doing business as Casino M8trix, opened a new
20 casino, entertainment, and conference facility at 1887 Matrix Boulevard.

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

JURISDICTION

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

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

26. Business and Professions Code section 19823 provides:

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

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

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

(b) For the purposes of this section, “unqualified person” means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and “disqualified person” means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.

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

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

* * *

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

* * *

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

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

The department^[1] . . . shall have all of the following responsibilities:

* * *

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

* * *

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

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

(a) Upon the filing with the Commission of an accusation by the Bureau recommending revocation, suspension, or other discipline of a holder of a license, registration, permit, finding of suitability, or approval, the Commission shall proceed under Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

* * *

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

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

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

* * *

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

¹ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

COST RECOVERY

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

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

* * *

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

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

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

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

* * *

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

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

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

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35. Business and Professions Code section 19866 provides:

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

36. Business and Professions Code section 19920 provides:

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

37. Business and Professions Code section 19922 provides:

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

38. Business and Professions Code section 19923 provides:

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

39. Business and Professions Code section 19944 provides:

Any person who willfully resists, prevents, impedes, or interferes with the department or the commission or any of their agents or employees in the performance of duties pursuant to this chapter is guilty of a misdemeanor.

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

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

(a) Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance by the department, and in no event shall

1 a gambling enterprise or the house have any interest, whether direct or
2 indirect, in funds wagered, lost, or won.

3 41. California Code of Regulations, title 11, section 2070, subdivisions (a) and (b)
4 provide:

5 It shall be an unsuitable method of operation for a gambling
6 establishment to:

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

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

13 42. San Jose Municipal Code, title 16, section 16.18.010, subdivision B provides:

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

17 43. San Jose Municipal Code, title 16, section 16.18.040, subdivision B, provides:

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

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

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

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

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

26 **FIRST CAUSE FOR DISCIPLINE
27 AND DENIAL OF RENEWAL**

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

45. Mr. Swallow's license is subject to discipline and denial of renewal, pursuant to
Business and Professions Code sections 19823, 19857, subdivisions (a) and (b), and 19859,
subdivisions (a) and (b). Respondent's continued licensure is inimical to public health, safety,
and welfare. He is not a person of good character, honesty, and integrity. His prior activities

1 pose a threat to the effective regulation and control of controlled gambling, and create or
2 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
3 carrying on the business and financial arrangements incidental to the conduct of controlled
4 gambling. Respondent had an indirect interest in funds wagered, lost, or won by Team View
5 Player Services, which provided third-party proposition player services to Garden City.
6 Specifically, Secure Stone, a Delaware limited liability company the sole member of which is
7 Respondent's wife, received payments totaling approximately \$3.6 million from Team View
8 Associates, the sole member of which is Mr. Gustin, who is Team View Player Services's sole
9 member. Those payments were made in 2010, 2011, and 2012. Business and Professions Code
10 section 19984, subdivision (a) prohibits the receipt of such payments.

11 **SECOND CAUSE FOR DISCIPLINE**
12 **AND DENIAL OF RENEWAL**

13 **(Providing False or Misleading Information to the Bureau)**

14 46. Respondent's license is subject to discipline and denial of renewal, pursuant to
15 Business and Professions Code sections 19823, 19857, subdivisions (a) and (b), and 19859,
16 subdivisions (a) and (b). Respondent's continued licensure is inimical to public health, safety,
17 and welfare. He is not a person of good character, honesty, and integrity and his prior activities
18 pose a threat to the effective regulation and control of controlled gambling, and create or
19 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
20 carrying on the business and financial arrangements incidental to the conduct of controlled
21 gambling. Respondent, or his agents, supplied untrue or misleading information as to material
22 facts pertaining to his qualification criteria. Specifically, the false or misleading information
23 included, among other things and without limitation, the following:

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

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

13 (c) Mr. Swallow's agent represented to the Bureau that certain payments exceeding
14 \$1.4 million received by Deborah Swallow in 2010 from Secure Stone related to the sale
15 of her dental practice. Those payments did not relate to the sale of her dental practice; the
16 payments came indirectly from Team View Player Services in violation of Business and
17 Professions Code section 19984, subdivision (a).

18 (d) By letter dated July 10, 2013, Mr. Swallow's agent represented that Deborah
19 Swallow had "no interest in Casino M8trix" and that her business affairs were
20 independent of Swallow's. Her business affairs were not independent of Mr. Swallow's in
21 all respects. For example, at the time of the representation, Deborah Swallow was a
22 trustee of the Swallow Trust, which had a 50-percent membership interest in Dolchee,
23 which received millions of dollars from Garden City. The Swallow Trust also had a 50-
24 percent membership interest in Airport Fund, which in turn was the only member of
25 Airport Parkway, which owns 1887 Matrix Boulevard. As a further example of the
26 dependence of their business affairs, Deborah Swallow's personal property secures
27 repayment of loans made to Airport Parkway.
28

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

12 (f) Mr. Swallow represented that the payments made by Garden City to Profitable
13 Casino were based upon the proprietary nature and competitive advantage derived from
14 software provided by Profitable Casino. All or a portion of the payments to Profitable
15 Casino were dividends or distributions paid to Swallow. Nonetheless, they were expensed
16 by Garden City. The payments to Profitable Casino were equal to payments made by
17 Garden City to Potere. No justification or substantiation was required for the payments
18 made to Potere. Those payments were based on Garden City's cash flow and net income;
19 they in effect were dividends or distributions paid to Mr. Lunardi that also were expensed
20 by Garden City.

21 (g) Mr. Swallow caused a valuation of games owned by Dolchee and software
22 purportedly owned by Profitable Casino to be prepared by Grant Thornton (GT Report)
23 and submitted to the Bureau. The GT Report was false and misleading. Among other
24 things, it represented that Garden City licensed a number of card games from Dolchee,
25 including Baccarat Gold, Double Hand Poker Gold, Pai Gow Tiles Gold, Texas Hold'em
26 Gold, and Omaha Gold (collectively, Dolchee Games) and that those games had unique
27 rules, betting options, and visual layouts, which are variations of some well-known casino
28 games. But only one of those games – Baccarat Gold – was patented or copyrighted.

1 Garden City never has received approvals from the Bureau to play the Dolchee Games
2 known as Pai Gow Tiles Gold, Texas Hold'em Gold, or Omaha Gold. Garden City never
3 has received approvals from the City of San Jose to play any of the Dolchee Games other
4 than Baccarat Gold. The versions of the Dolchee Games, other than Baccarat Gold,
5 approved by the Bureau for play at Garden City did not have any unique rules or betting
6 options.

7 (h) The GT Report represented that Garden City licensed Pai Gow Poker and
8 Ultimate Texas Hold'em games from ShuffleMaster, a well-known provider of table
9 games to California card rooms, and then turned those games over to Dolchee for
10 rebranding. In preparing the valuation, Grant Thornton was acting as an agent of Mr.
11 Swallow, who was the source of information that it used. The GT Report was false and
12 misleading with respect to the so-called "rebranding" of ShuffleMaster games. In truth,
13 ShuffleMaster's agreements provide that a "Customer shall not make any modification to
14 the [game], nor shall it remove or reproduce the [game]" Under its ShuffleMaster
15 agreements, Garden City had no power to sublicense the games. In response to the
16 Bureau's requests, Mr. Swallow failed to provide any documentation showing
17 modification, rebranding, or sublicensing of games provided by ShuffleMaster or any
18 other vendor.

19 (i) The GT Report represented that Dolchee provided gaming analytical software to
20 Garden City. The GT Report concluded that the gaming analytical software's fair value
21 was \$29.5 million. The GT Report was false and misleading with respect to the so-called
22 "gaming analytical software." The agreement between Dolchee and Garden City granted
23 a license to play the Dolchee Games. That agreement provided nothing for, and did not
24 mention, gaming analytical software. In response to the Bureau's request that he "state
25 the reasons for the payments and the amounts of any payments that were not made under
26 the terms of the License Agreement," Mr. Swallow provided no reasons, thus indicating
27 that all payments from Garden City to Dolchee were under the agreement's terms. At the
28 Commission's February 21, 2013 meeting, Mr. Swallow stated that Dolchee developed a

1 baccarat game for use at Garden City, which had paid \$5 million for the right to use that
2 game. Garden City's financial statements for 2009, 2010, 2011, and 2012 reported the
3 payments to Dolchee as "licensed game fees."

4 (j) In response to the Bureau's request that he provide copies of certain software
5 agreements for LAX, Mr. Swallow responded, in part, "no payments have been made to
6 Profitable Casino LLC for services provided to date." In truth, through Secure Stone and
7 LAX, Mr. Swallow paid monies to Bryan Roberts for services provided for Hollywood
8 Park.

9 (k) In response to the Bureau's request that he "identify each person who worked on,
10 participated in, or assisted in the creation, development, or testing of games or software"
11 relating to Dolchee, Mr. Swallow identified Bryan Roberts. Mr. Swallow responded, in
12 part, "Bryan Roberts developed the software." In truth, Mr. Roberts did not work on, or
13 develop, any software for Dolchee.

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

22 (m) The Bureau requested that Mr. Swallow "provide complete contracts of all
23 agreements . . . between (a) Bryan Roberts . . . and (b) . . . Mr. Swallow . . ." Mr.
24 Swallow failed to respond fully to the request. Instead, he responded that Profitable
25 Casino and Mr. Roberts entered into oral agreements. In truth, Mr. Swallow and Mr.
26 Roberts entered into a Software Service Agreement, which created a profit-sharing
27 arrangement between the two. Mr. Swallow failed to provide the Bureau with a copy of
28 that agreement.

1 (n) In response to the Bureau's request that he provide a list of assets held by the
2 Swallow Trust, Mr. Swallow failed to list Dolchee and Airport Fund. In truth, the
3 Swallow Trust held a 50-percent interest in both.

4 **THIRD CAUSE FOR DISCIPLINE**
5 **AND DENIAL OF RENEWAL**

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

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

17 (a) The Bureau requested that Mr. Swallow state whether monies provided by his and
18 the Lunardis' affiliates in connection with acquisition, construction, or improvement of
19 1887 Matrix Boulevard were gifts, investments, or capital contributions. The amounts
20 totaled more than \$2 million. Mr. Swallow failed to provide the requested information.

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

25 (c) The Bureau asked Mr. Swallow whether any loans entered into in connection with
26 1887 Matrix Boulevard's acquisition, construction, or improvement were collateralized
27 with or secured by any assets or property held by Garden City. The Bureau requested
28

1 that, if so, Mr. Swallow provide copies of all documents relating to the loans. Mr.
2 Swallow failed to provide the requested information and documents.

3 (d) The Bureau asked Mr. Swallow to provide certain information with respect to
4 games licensed to Garden City for play including, among other things, the name and
5 GEGA number of each game. Mr. Swallow failed to provide all information.

6 (e) The Bureau asked Mr. Swallow to provide specific information with respect to
7 each game licensed to Garden City by Dolchee. The requested information included the
8 game's name, GEGA number and the date of approval for play, the date the game was
9 first played, and patent information. Swallow failed to provide any of the requested
10 information.

11 (f) The Bureau requested Mr. Swallow to provide information about, including
12 agreements or invoices underlying, payments received by him or any of his affiliates or
13 immediate family from any third-party provider of proposition player services or any
14 person or entity affiliated with a third-party provider of proposition player services. Mr.
15 Swallow failed to provide the requested information and documents.

16 (g) The Bureau requested Mr. Swallow to provide the written accountant's opinion
17 that Mr. Swallow had represented to the Commission existed. Despite multiple requests,
18 he did not provide the requested written opinion. Ultimately, Mr. Swallow advised that
19 the written opinion did not exist as previously represented and, in effect, confirmed that he
20 had provided false or misleading information to both the Bureau and the Commission.

21 (h) The Bureau requested Mr. Swallow to provide an accountant's fair market
22 determination of certain transactions with affiliates. The Bureau specifically requested a
23 valuation based upon what a willing buyer or user would pay to a willing seller or vendor
24 dealing at arms' length when neither was acting under compulsion to enter into the subject
25 transactions. Mr. Swallow failed to provide the requested fair market valuation. Instead,
26 as alleged in paragraph 46 above, he caused the GT Report, which is false and misleading,
27 to be provided to the Bureau.
28

1 (i) The Bureau requested that Mr. Swallow “provide complete contracts of all
2 agreements . . . between (a) Bryan Roberts . . . and (b) . . . Mr. Swallow” Mr.
3 Swallow failed to respond fully to the request. Instead, he responded that Profitable
4 Casino and Mr. Roberts entered into oral agreements. In truth, Mr. Swallow and Mr.
5 Roberts entered into a Software Service Agreement, which created a profit-sharing
6 arrangement between the two. Mr. Swallow failed to provide the Bureau with a copy of
7 that agreement.

8 **FOURTH CAUSE FOR DISCIPLINE**
9 **AND DENIAL OF RENEWAL**
10 **(Unqualified for Licensure)**

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

21 (a) Mr. Swallow, directly or through his agents, repeatedly provided false or
22 misleading information to the City of San Jose or impeded its licensing investigations.
23 Among other things, Mr. Swallow led the City of San Jose’s investigators to believe that
24 he, not the Swallow Trust, was a member of Dolchee and Airport Fund. Mr. Swallow
25 directed Mr. Roberts not to make full and true disclosure to the City of San Jose’s
26 investigators regarding Secure Stone. Mr. Swallow instructed Mr. Roberts, and gave him
27 guidance on how, to be evasive. Mr. Swallow also told Mr. Roberts to state falsely to the
28

1 City of San Jose's investigators that Mr. Roberts had worked with Deborah Swallow in
2 connection with her dental practice.

3 (b) Mr. Swallow, directly or through agents, made false and misleading statements to
4 the Commission. Among other things, Mr. Swallow represented to the Commission that
5 an accounting firm had provided the pricing model that was used to determine what to
6 charge Garden City for Profitable Casino's software and Dolchee's games. Mr. Swallow
7 further represented that he had a written opinion of value from his accountant's firm.
8 These representations were false. Mr. Swallow's accountant represented that measures
9 put in place by Mr. Swallow and Mr. Lunardi increased profits, or "the bottom line," by
10 \$13 million between 2008 and 2009. In truth, the net profits – i.e., the bottom line –
11 declined from approximately \$1.7 million in 2008 to approximately \$37,000 in 2009.
12 That was a 97.8 percent decline. As a further example, Mr. Swallow represented to the
13 Commission that he had documents evidencing certain consulting services provided by
14 Casino M8trix, Inc. to Dolchee, as well as a contract for the payment of approximately \$6
15 million by Dolchee for those services. Despite his agreeing to do so, Mr. Swallow never
16 provided such documents or contract to the Bureau or the Commission.

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

28

1 (d) Mr. Swallow aided, facilitated, turned a blind eye to, or benefited from acts and
2 omissions that violated San Jose Municipal Code, title 16.

3 (e) Mr. Swallow aided, facilitated, turned a blind eye to, or benefited from monies
4 derived from the play or carrying on of a controlled game that were paid indirectly to the
5 Swallow Trust and/or Deborah Swallow, and neither was licensed as required under the
6 Act.

7 (f) After this proceeding commenced, Mr. Swallow requested that Mr. Roberts change
8 certain data contained on Garden City's computer server. In furtherance of that request,
9 Mr. Swallow requested that Garden City's Management Information Systems
10 Administrator allow Mr. Roberts access to the computer server.

11 **FIFTH CAUSE FOR DISCIPLINE**
12 **AND DENIAL OF RENEWAL**
13 **(Disqualified for Licensure)**

14 49. Respondent's license is subject to discipline and denial of renewal, pursuant to
15 Business and Professions Code sections 19823 and 19859, subdivision (a). Respondent's
16 continued licensure is inimical to public health, safety, and welfare. He is not a person of good
17 character, honesty, and integrity and his prior activities pose a threat to the effective regulation
18 and control of controlled gambling, and create or enhance the dangers of unsuitable, unfair, or
19 illegal practices, methods, and activities in carrying on the business and financial arrangements
20 incidental to the conduct of controlled gambling. Respondent knew of, should have known of,
21 was willfully ignorant of, allowed to occur, assisted, abetted and/or tolerated the acts and
22 omissions alleged above. He fostered a culture of operating in disregard of the laws applicable
23 to gambling. Mr. Swallow thus has failed to clearly establish eligibility and qualification for
24 licensure in accordance with the Act.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Commission issue a decision:
28

1 1. Revoking or suspending, and denying renewal of, California State Gambling License
2 Number GEOW-001330, issued to Eric Swallow;

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

5 3. Awarding Complainant the costs of investigation and costs of bringing this
6 Accusation and Statement of Issues before the Commission, pursuant to Business and
7 Professions Code section 19930, subdivisions (d) and (f), in a sum according to proof; and

8 4. Taking such other and further action as the Commission may deem appropriate.

9
10 Dated: July 21st, 2015



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

EXHIBIT A
Relationships and Cash Flows
2010-2012

n Line

