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By Personal Delivery

Chairman Jim Evans
Commissioners Lauren Hammond, Paula D. LaBrie & Trang To
Chief Counsel Todd Vlaanderen
CALIFORNIA GAMBLING CONTROL COMMISSION
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833-4232

Re: *Proposed Stock Purchase Agreement, Assignment Agreement, and Initial State Gambling Licenses Submitted by Lunardis and Tierneys*

Dear Chairman Evans; Commissioners Hammond, La Brie and To; and Mr. Vlaanderen:

We are writing on behalf of John Park to urge the Commission to withhold action at the May 25, 2017 Commission meeting on the proposed Stock Purchase Agreement between Eric Swallow and the Lunardis[1] ("Lunardi-Swallow Purchase Agreement"); the related Assignment Agreement between the Lunardis and Tierneys[2] ("Tierney Assignment"); the Tierneys' Application for an Initial State Gambling License; and the related Credit Agreement. (The aforementioned items are referred to collectively in this letter as the "Lunardi-Tierney Application.") The Commission should withhold any action because a Deputy Attorney General closely monitoring and investigating the transaction (the "DAG") has engaged in irregular, improper, and, at times, likely illegal attempts to influence the sale of Mr. Swallow's shares for the benefit of the Lunardis. For that reason, the Bureau's April 26, 2017 recommendation is tainted and should not be followed.

For approximately 18 months, the Attorney General's Office has been investigating two separate complaints regarding the DAG. In deference to that investigation, we have refrained from directly contacting the Commission regarding our concerns. We have been informed that the investigation will be completed in the very near term. In light of the Lunardi-Swallow Purchase Agreement being on the agenda for the May 25, 2017 meeting, however, we did not feel we could wait any longer before raising these issues. We are still mindful of the

[1] The "Lunardis" refers collectively to the Lunardi Family Trust, Peter V. Lunardi III and Jeanine Lunardi
[2] The "Tierneys" refers collectively to Patrick and Jami Tierney.

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investigatory process, though, and in deference to that process, we are not specifically identifying by name herein the Deputy Attorney General at issue.

We respectfully request that the Commission, too, defer any decision until the Attorney General's office has completed its investigation. We encourage the Commission to communicate directly with the Attorney General's office to ascertain the progress of its investigation, as well as the facts and circumstances of the investigation. In the alternative, the Commission could order an independent third party to conduct an analysis of the Lunardi-Tierney Application before taking any final action.

For reasons unclear to us, it has become obvious that the DAG handpicked the Lunardis as the buyers of Mr. Swallow's shares long ago, and has used the power vested by the State to make that decision come to fruition, at the expense of Mr. Park. These actions include, but are not limited to (1) vigorously prosecuting Mr. Swallow, but not the Lunardis, to coerce Mr. Swallow to sell his shares and drive down the purchase price of Garden City, Inc. dba Casino M8trix ("GCI") for the Lunardis; (2) improperly facilitating payment to a third-party witness to testify against Mr. Swallow and lying to an Administrative Law Judge and the Commission about their involvement; (3) tacitly, if not expressly, encouraging this same third-party witness to illegally access Mr. Swallow's electronic data; (4) delaying the Bureau's analysis and submission of Mr. Park's GCI purchase application to the Commission for several months and, in the process, raising nonexistent or otherwise irrelevant issues with respect to Mr. Park's application; (5) coordinating (and/or colluding) with Mr. Park's former counsel, Tracey Buck-Walsh – who now represents the Lunardis and Tierneys – to ensure that the Lunardis and Tierneys come away with complete ownership of GCI; (6) ignoring numerous actions undertaken by the Lunardis in their efforts to purchase Mr. Swallow's shares that have harmed GCI; (7) overlooking the Lunardis' and GCI's accounting irregularities intended to paint an unrealistic financial picture of GCI in order to facilitate the bank loan to finance the Lunardis' purchase of Mr. Swallow's shares; and (8) sanctioning an agreement allowing the Tierneys to act as an unlicensed funding source for GCI in the event their license application is not approved before the Lunardis have to close on their purchase agreement with Mr. Swallow.

The DAG has used the power of the State to conduct a concerted campaign to predetermine winners and losers among private parties in a cardroom transaction. The Commission can ensure this conduct does not continue or cause harm to the gaming industry by waiting until the Attorney General's office concludes its investigation, or ordering an independent, third-party investigation of the issues outlined in this letter before taking any action on the Lunardi-Tierney Application. A brief delay to allow the relevant facts to be discovered will not cause any harm to the process or the parties at issue. This is the only path consistent

with the Commission's primary responsibility to assure that "there is no material involvement, directly or indirectly, with a licensed gambling operation" by persons whose conduct "is inimical to the public health, safety, or welfare." Bus. & Prof. Code § 19823,

A. The DAG Improperly Conducted the Prosecution and Resolution of the Accusation against GCI, the Lunardis, and Mr. Swallow To Help the Lunardis Obtain Mr. Swallow's GCI Shares.

Working with Tracey Buck-Walsh (the Lunardis' and Tierneys' counsel), the DAG was heavily involved in the Accusation against GCI, the Lunardis, and Mr. Swallow. The DAG conducted the Accusation to achieve the result that the Lunardis would end up owning 100 percent of GCI's shares for a price that was far below fair market value. We do not know ***why*** this individual decided that that was his desired result, but it is clear that he used the powers entrusted in him by the State to achieve that result.

1. The DAG Used Improper and Likely Illegal Means To Procure the Testimony of a Witness To Testify Against Mr. Swallow.

When the DAG was unable to force his chosen settlement terms on Mr. Swallow, the DAG instead focused on vigorously prosecuting Mr. Swallow. That "vigor," however, crossed a line. As part of his efforts to prosecute Mr. Swallow, the DAG used improper and very likely illegal means to procure the testimony of a witness.

Bryan Roberts, GCI's former IT Manager, was owed approximately $18,000 upon his termination from GCI. In April 2015 (shortly after Mr. Swallow rejected the proposed settlement), the DAG emailed Mr. Roberts to request his testimony in exchange for payment of the amount owed to him:

> "***I am working with the attorneys for Garden City, Inc.*** … ***to make arrangements*** for a trip to California ***and your payment***.… I would like to show Garden City's attorneys that your prospective statement under oath will be helpful ….
> …
>
> ***If you provide written answers to the above inquiries, I will endeavor to get Garden City's attorneys to revive the offer to pay you*** and to pay your way to California."

(April 13, 2015 Email from DAG to Roberts.)[3] Mr. Roberts responded that he would only come to California and sit for an interview if GCI [Casino M8trix] provided a guarantee that it would pay him the amounts owed:

> "I would like guarantees from Casino M8trix that they will pay for both the remaining $18,000 and $2,000 to cover my expenses for myself and my wife to come to Sacramento, CA. I would prefer, but not require, that Casino M8trix pay a minimum of 50% upfront – to show good faith."

(April 15, 2015 Email from Roberts to DAG.) After additional exchanges between Messrs. Roberts, Lunardi, and the DAG, Mr. Lunardi informed Mr. Roberts that the DAG "has approved your payment," (May 28, 2015 Email from Lunardi to Roberts), and GCI Counsel Robert Lindo subsequently confirmed to Mr. Roberts (in an email copied to the DAG and Lunardi, and Ms. Buck-Walsh) that GCI would "have the check here for you following your interviews." (July 6, 2015 Email from Lindo to Roberts.) With his payment "approved" by the DAG, Mr. Roberts – who lived outside of California and thus beyond the Bureau's subpoena power – went to California to sit for two interviews, one with the Lunardis' counsel and one with the Bureau. (July 6, 2015 Email from Roberts to Lunardi; July 9, 2015 Email chain between Roberts and Lindo.) Following his interview, Mr. Roberts also signed a declaration written by the Bureau at the direction the DAG. (Proposed Decision, *In the Matter of the Accusation Against Garden City, Inc. et al*., OAH No. 2014060129, at p. 4 (filed Dec. 24, 2016).)

2. The DAG Repeatedly Lied to the ALJ and Commission About His Involvement in Procuring Mr. Roberts' Testimony.

At the August 19, 2016 administrative hearing on the Accusation against Mr. Swallow, the DAG denied any involvement in procuring payment for Mr. Roberts' testimony: "Garden City paid him [Roberts] the money owed. It was negotiated between Garden City and Mr. Roberts. ***The state was not involved in that process, whatsoever***." (Aug. 19, 2016 Tr., *In the Matter of the Accusation Against Garden City, Inc. et al*, *supra*, emphasis added.) After reviewing the evidence before her, ALJ Anderson rejected the DAG's representation to the court, finding that Mr. Roberts "was experiencing serious financial difficulties and was desperate to be paid," that the Bureau 'directed the consultant and Lunardi not to pay Roberts until he submitted to an interview," and that his "statement was essentially purchased by the Bureau with Lunardi's

[3] We will make the exhibits referenced herein available to the Bureau or Commission upon request.

assistance." (Proposed Decision, *In the Matter of the Accusation Against Garden City, Inc. et al.*, *supra,* at p. 4.)

Even after ALJ Anderson's scathing finding, the DAG continued to deny his involvement to the Commission. For example, in a March 29, 2016 Reply Brief in the Swallow Accusation, the DAG falsely stated to the Commission that "[n]o evidence exists that Mr. Roberts' Testimony was coerced." (Complainant's Reply Brief, *In the Matter of the Accusation Against Garden City, Inc. et al.*, *supra*, at pp. 2-3 (filed March 29, 2016).)

3. The DAG Encouraged Mr. Roberts To Illegally Search Mr. Swallow's Electronic Data, Including His Private Emails.

In addition to effectively purchasing Mr. Roberts' testimony, the DAG was, at a minimum, complicit in Mr. Robert's warrantless and illegal search of Mr. Swallow's servers. In July 2015, after Mr. Roberts agreed to provide testimony to the Bureau, Mr. Roberts informed the DAG that he could access information and communications on Mr. Swallow's private servers by virtue of his prior position as IT manager, including emails from Mr. Swallow's account. Mr. Roberts also informed the DAG that he was reviewing "thousands of emails" between himself, GCI, and Mr. Swallow, and stated that he was "going to transfer all of that data from the old server over to a backup drive," and that he would "comb through the emails to see if there are any that [he] can provide." (July 13, 2015 Email from Roberts to DAG.)

The unauthorized access of Mr. Swallow's servers and email accounts is a felony/misdemeanor. *See* Penal Code § 502(c)(2) ("[A]ny person who … [k]nowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network … is guilty of a public offense."). We have seen no emails from the DAG seeking to prevent or dissuade Mr. Roberts from accessing Mr. Swallow's server. At one point, Mr. Roberts requested to speak with the DAG over the phone regarding something he "stumbled upon," and there is no written response. (July 13, 2015 Email from Roberts to DAG.) And while we do not know exactly what the DAG said to Mr. Roberts when they presumably spoke on the phone, we do know that Mr. Roberts continued to assist the DAG in pursuing this illegal activity.

It does not appear that the DAG ever disclosed to the Commission the fact that Mr. Roberts accessed Mr. Swallow's servers and emails, and that the DAG – an attorney acting on behalf of the State of California – did nothing to prevent or dissuade Mr. Roberts from doing so.

4. The DAG Attempted To Orchestrate an Unfair Global Settlement To Coerce Mr. Swallow To Sell His Shares to the Lunardis at a Fraction of Their Value

In approximately March 2015, the DAG arbitrarily determined the value of Mr. Swallow's shares to be $29 million ($34 million including the real estate on which the M8trix Casino is located). (March 5, 2015 Email from Ann M. Dalsin to Allen Ruby et al. & Letter of Intent.) Ultimately, this arbitrary decision was an ill-fated attempt to assist the Lunardis in obtaining Mr. Swallow's shares for millions less than their fair market value. This is far less than the value of the CGI shares, as demonstrated by both Mr. Park's and the Lunardis' and Tierneys' subsequent efforts to purchase those shares for $55 million. In fact, in 2010 – nearly five years before the DAG's proposed settlement – Mr. Lunardi stated under penalty of perjury to the City of San Jose that he believed his shares alone (without the accompanying real estate) were worth $50 million. (Oct 28, 2015 Tr., *Swallow v. Lunardi et al.*, at pp. 534, 544 (JAMS).)

In addition, while counsel for the Lunardis, Mr. Swallow, and GCI were working collaboratively under an implied joint defense agreement, the DAG gained access to the defendants' joint defense communications – having been invited to the discussions by Ms. Buck-Walsh, who was counsel for the Lunardis in those discussions. (March 30, 2015 Email from Allen J. Ruby to Tracey Buck-Walsh; March 28, 2015 Email from Allen J. Ruby to Tracey Buck-Walsh.) Such access by a prosecutor is unheard of.

When the DAG was unable to orchestrate his desired global settlement, the DAG decided instead to settle with the Lunardis and go hard after Mr. Swallow – apparently as a punishment for refusing to sell his GCI shares for tens of millions of dollars below market value. Specifically, the DAG agreed to settle with Mr. Lunardi for only a $250,000 fine, with Mr. Lunardi being able to keep his gambling license. This was notwithstanding that Mr. Lunardi admitted to a number of violations as part of the settlement, including "assisting, and kn[owing] of, payments made to the [GCI] Related Companies, which were not licensed," and "engag[ing] in, aid[ing], or accept[ing] the benefits of patterns and practices that demonstrate a disregard for prudent and usual business controls and oversights," which "included financial dealings involving millions of dollars that were not documented." Jeanine Lunardi was not required to pay any fine. (Stipulated Settlement; Decision and Order, *In the Matter of the Accusation Against Garden City, Inc. et al.*, *supra*, at p. 16 (filed May 14, 2015).)

By contrast, the DAG recommended to the Commission that Mr. Swallow be assessed "the maximum possible fine" – as much as $18.8 million (***75 times*** Mr. Lunardi's fine). The DAG also recommended that Mr. Swallow's license be revoked. (Complainant's Closing Brief,

In the Matter of the Accusation Against Garden City, Inc. et al., *supra*, at p. 43-44 (filed May 14, 2015).) Given the extent of the DAG's other actions, this severe discrepancy in treatment appears to have been motivated by a desire to coerce Mr. Swallow into selling his GCI shares to the Lunardis at far less than their value, as the DAG initially attempted to do in the proposed settlement.

B. The DAG Has Unfairly Favored the Lunardis throughout the Application Approval Process.

Although the state should not put a thumb on the scale in favor of one private party over another, that is exactly what has happened here: the DAG has decided that the Lunardis, and not Mr. Park, should be able to buy Mr. Swallow's shares. The DAG has taken a series of improper steps to make sure the Lunardis win.

1. The DAG Took Steps To Block or Delay the Commission's Consideration of the Park-Swallow Stock Purchase Agreement for the Benefit of the Lunardis.

After Mr. Park and Mr. Swallow entered into a written Stock Purchase Agreement in April 2015 following Mr. Swallow's rejection of the DAG's proposed settlement, Mr. Park submitted his purchase application to the Bureau almost immediately. The DAG, however, took a number of steps to delay Mr. Park's application, apparently in an effort to aid the Lunardis' efforts to exercise their alleged Right of First Refusal and match Mr. Park's agreement.

First, the DAG requested that Mr. Park justify his purchase price ($55 million) by showing it represented the "fair market value" of Mr. Swallow's shares, arguing that $55 million exceeded the "market caps for other card rooms." (May 11, 2015 Email from DAG to Michael Vasey ¶ 7.) The Bureau had never before required Mr. Park to justify the purchase price of any of the previous six cardrooms he had purchased. During the pendency of these discussions, Ms. Buck-Walsh informed the DAG that the Lunardis intended to exercise their alleged right of first refusal. (May 24, 2015 Email from Tracey Buck-Walsh to DAG.) The DAG's intent appears to have been ***not*** to ensure a "fair purchase price" for Mr. Swallow's shares, but rather to coerce Mr. Park into renegotiating his agreement with Mr. Swallow to drive down the purchase price for the Lunardis.

Second, the DAG sat on Mr. Park's purchase application for several months, waiting for the Lunardis to submit their own purchase application before finalizing the Bureau's review. The DAG told Mr. Park in June 2015 that the Bureau could not complete its review of Mr. Park's application until Mr. Park submitted complete, finalized loan documentation. (June 12, 2015

Email from DAG to Michael Vasey.) Mr. Park submitted these additional documents by August 20, 2015; however, the DAG still did not submit an analysis of Mr. Park's application to the Commission. Instead, the DAG waited until the Lunardis finally submitted their own application to the Bureau on September 9, 2015, ***without*** the finalized loan documentation the DAG required of Mr. Park, and submitted the Bureau's analyses of both the Park and Lunardi applications to the Commission within a few days (over six months after Mr. Park submitted his application, and less than two months after the Lunardis submitted their application). (*See* Oct. 30, 2015 Letter from Bureau to Commission RE: Application for State Gambling License for John Park; Nov. 3, 2015 Letter from Bureau to Commission RE: Garden City, Inc., dba Casino M8trix Proposed Purchase by the Lunardi Family Trust.)

2. The DAG's Analyses of Mr. Park's and the Lunardis' Respective Purchase Applications Unfairly Favored the Lunardis.

In addition to sitting on Mr. Park's application for several months before submitting it to the Commission, the DAG raised several nonexistent or irrelevant "issues" with respect to Mr. Park's application. The DAG did not raise similar issues with respect to the Lunardis' application, and ignored other legitimate issues with respect to the Lunardis' application.

For instance, the DAG stated that Mr. Park's purchase of Mr. Swallow's shares might violate the Bureau's Amended Emergency Order ("AEO") prohibiting distributions from GCI to Mr. Swallow. (Oct. 30, 2015 Letter from Bureau to Commission, *supra*, at pp. 8, 16-17.) As described above, however, the Bureau already had required Mr. Park to submit complete loan documentation verifying that his funds would come from his own personal financial holdings and loan – not from GCI. By contrast, the Lunardis' application included a direct cash flow from GCI to Mr. Swallow. The cash portion of the Lunardis' purchase would come from their previous dividends from GCI, and, according to the partial loan documentation the Lunardis submitted, GCI would take out a loan to pay Mr. Swallow directly for his shares. (Oct. 30, 2015 Letter from Bureau to Commission, *supra*, at p. 9; Nov. 3, 2015 Letter from Bureau to Commission, *supra*, at p. 6.) The DAG did not raise any of these concerns in the Bureau's analysis to the Commission.

The DAG's analysis of Mr. Park's application also repeatedly mentioned that Mr. Park "admitted to all the factual and legal allegations" in the Accusation. (Oct. 30, 2015 Letter from Bureau to Commission, *supra*, at p. 7.) By contrast, the DAG hardly mentioned the Bureau's more recent Accusation against GCI, and did not raise the fact that Mr. Lunardi also admitted to the allegations contained in the Accusation against him. (Nov. 3, 2015 Letter from Bureau to Commission, *supra*, at p. 5.) The DAG also expressed concern that, because six conditions and warranties in the Park-Swallow Purchase Agreement needed to be waived, it "raise[d] substantial

questions as to whether the contemplated [Swallow-Park] transaction will close" (Oct. 30, 2015 Letter from Bureau to Commission, *supra,* at p. 13), notwithstanding the fact that Mr. Park already had informed the Bureau that he would waive the conditions.

Moreover, as part of its settlement of the Accusation, GCI is required to provide monthly financial statements to the Bureau to show it is engaging in sound business practices and complying with the Gambling Control Act. (Stipulated Settlement; Decision and Order, *In the Matter of the Accusation Against Garden City Inc. et al.*, *supra*, at pp. 18-19.) The Lunardis would not be able to show that and, accordingly, have not complied with that term of their settlement – with apparently no adverse consequences. The DAG has ignored the fact that the Lunardis have looted GCI's reserves, causing significant harm to the company, in an effort to accumulate the funds necessary to compete with the Park-Swallow purchase agreement. For instance, the Lunardis made excessive distributions from GCI to themselves. In fact, they distributed 125% of their ownership net income interest for 2015, which left GCI with current liabilities greater than its cash on hand. The Lunardis also increased GCI's accounts payable, its outstanding chip liability, and its accrued expenses, increasing GCI's total vendor liabilities by $1.833 million. (Garden City, Inc. Balance Sheet, Dec. 31, 2015 and 2014.) Apparently the DAG has not objected to or even questioned any of this.

In addition, while PT Gaming was still operating as GCI's third-party provider, the DAG overlooked the fact that the Lunardis significantly increased the annual fee GCI charged to PT Gaming – as we understand it, from $0 to $6.3 million. (Addendum A to the PT Gaming, LLC and Casino M8trix Contract Agreement at p. 1, Aug. 1, 2014) This is highly suspect because the Bureau's Accusation specifically accused GCI of charging its previous TPPPS an excessive, substantially disproportionate fee – at the time only $2.3 million. (The inference being that the excessive fee may be a mechanism to indirectly funnel earnings from the TPPPS to the cardroom, in violation of the Gambling Control Act.) Mr. Lunardi admitted to benefitting from this violation in his settlement with the Bureau. (Stipulated Settlement; Decision and Order, *In the Matter of the Accusation Against Garden City Inc. et al.*, *supra*, at p. 16.) Nevertheless, the Lunardis increased PT Gaming's fee to three times the fee previously considered excessive.

The substantial increase strongly suggests the Lunardis' primary motivation was to use PT Gaming as a funding source ***while PT Gaming was still employed as GCI's TPPPS***. This raises significant concerns with respect to the Gambling Control Act. *See* Bus. & Prof. Code § 19984 ("[I]n no event shall a gambling enterprise … have any interest, whether direct or indirect, in funds wagered, lost, or won" by a TPPPS.") The DAG did not ask the Lunardis to justify why GCI increased the fee.

3. The DAG Expedited the Approval of GCI's Current TPPPS so the Lunardis Could Assign a Portion of Mr. Swallow's Shares to the Tierneys.

Because the Lunardis do not have sufficient capital to purchase Mr. Swallow's shares on their own, they initially intended to assign a portion of their right to purchase Mr. Swallow's shares to an investment group led by Ryan Stone. (*See* Nov. 3, 2015 Letter from Bureau to Commission, *supra*, at pp. 7-8.) Once that proposal fell through, they decided to assign the right to purchase those shares to the Tierneys in or around April 2016. However, because the Tierneys' TPPPS, PT Gaming, was GCI's third party provider at the time, the Tierneys could not provide any funding to the Lunardis for the proposed purchase without violating the Gambling Control Act.

The Lunardis therefore needed to find a new TPPPS for GCI, and the Commission needed to approve that TPPPS, before the Lunardis could partner with the Tierneys to attempt to purchase Mr. Swallow's shares. The approval process for a new cardroom-TPPPS transaction normally takes between 60-90 days so that the Bureau may conduct an investigation into the transaction and the TPPPS's suitability for licensure. For GCI's new TPPPS, however, the Bureau miraculously completed its process in merely ***5 days*****.** It is almost certain that the DAG expedited the approval process, likely failing to conduct an adequate investigation, so that the Tierneys could provide the Lunardis immediate funding to compete with Mr. Park's Stock Purchase Agreement with Mr. Swallow.

4. While Mr. Park's Application Was Pending, the DAG Coordinated with the Lunardi's Counsel, Ms. Buck-Walsh, To Ensure the Lunardis Could Submit a Competing Application.

The DAG's partiality also is demonstrated by ongoing, private communications the DAG engaged in with the Lunardis' counsel, Ms. Buck-Walsh. As discussed above, Ms. Buck-Walsh shared private, privileged joint defense communications with the DAG after Mr. Swallow rejected the DAG's proposed global settlement. Ms. Buck-Walsh and the DAG then discussed Mr. Park's purchase application, even ***before*** the Lunardis attempted to exercise their alleged right of first refusal.[4] In a May 11, 2015 email, Ms. Buck-Walsh explained to the DAG that

[4] As the Commission is aware, the Lunardis and Mr. Swallow submitted to an arbitrator the issue of whether the Lunardis validly exercised their right of first refusal. Mr. Park was not a party to that arbitration, despite requesting that he be permitted to intervene. There are many reasons why the Lunardis have not validly exercised their right of first refusal, only some of which were raised by Mr. Swallow in the arbitration. Accordingly, Mr. Park has commenced a separate action in the Los Angeles County Superior Court seeking a judicial determination of who – as

Mr. Park should be ineligible for an ownership interest in GCI because of the Stipulated Settlement, Decision and Order that resulted from the Bureau's 2012 Park-Tierney investigation:

> So it looks as if the Bureau/GCCC [Commission] is in the driver's seat in enforcing this decision. The analysis on Park's eligibility will be the determining factor. If the Bureau deems that Park is ineligible for an ownership interest in a GE [gambling establishment] in which PTG [PT Gaming] has a valid TPPPS contract, then that is the end of the analysis.

(May 11, 2015 Email from Tracey Buck-Walsh to DAG.) Just four hours after Ms. Buck-Walsh's message on behalf of the Lunardis raising the Stipulated Settlement as an issue, the DAG sent an email to Mr. Park's designated agent, Michael Vasey, requesting an explanation of "why Mr. Park's purchase of Garden City, Inc. stock does not violate, or is not precluded by, the Stipulated Settlement." (May 11, 2015 Email from DAG to Michael Vasey ¶ 10.) The Bureau then raised precisely this issue in its analysis of Mr. Park's application. (Oct. 30. 2015 Letter from Bureau to Commission, *supra*, at p. 16.) Ms. Buck-Walsh also asked the DAG to ensure that Mr. Park's proposed purchase could not be used to "oust" the Tierneys – her other clients – from their TPPPS contract with GCI. (May 11, 2015 Email from Tracey Buck-Walsh to DAG.)

A couple of weeks later, Ms. Buck-Walsh solicited the DAG's assistance to help the Lunardis exercise the Right of First Refusal in a manner that did not violate the GCI Amended Emergency Order ("AEO"):

> In order to protect the Lunardis and GCI [Garden City] and still allow the Lunardis to exercise their ROFR [Right of First Refusal] (should they decide to do so), would you agree that the following language will protect them from violating the SSDO? If not, can you suggest amended language that will allow them to exercise their ROFR without violating the SSDO?

(May 24, 2015 Email from Tracey Buck-Walsh to DAG.)

As a result of the Swallow Accusation, Mr. Park was able to discover these communications between Ms. Buck-Walsh and the DAG. The DAG and Ms. Buck-Walsh likely

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between the Lunardis and Mr. Park – has the right to purchase Mr. Swallow's shares. Only the court's decision, and not the arbitrator's, can be binding on Mr. Park. The Commission should not assume the arbitrator reached the right result, hearing only a portion of the evidence and argument.

had numerous other discussions for which there is no written record about the steps the Bureau could take to benefit the Lunardis.

C. The Process Has Been Further Tainted by Ms. Buck-Walsh's Ongoing Breach of Her Fiduciary Duties to Mr. Park, Her Former Client.

The DAG's communications with Ms. Buck-Walsh illuminate another problem with the process leading to the Bureau's final recommendation to approve the Lunardi-Tierney Application. As this Commission is aware, Ms. Buck-Walsh represented Mr. Park and his gaming businesses for over ten years in connection with his various gaming license applications, renewals, and other related issues. Ms. Buck-Walsh's representation of Mr. Park included defending him after the Bureau issued a Letter of Warning in 2011 regarding Mr. Park's financial relationship with Patrick Tierney, which ultimately led to an Accusation against Mr. Park and, subsequently, a Stipulated Settlement, Decision and Order with the Bureau in 2012. Ms. Buck-Walsh's current representation of the Lunardis – after representing Mr. Park in substantially related matters – is illegal and unfairly prejudices Mr. Park to the benefit of the Lunardis and Tierneys.

California Rule of Professional Conduct 3-310(E) prohibits a lawyer from representing a new client who is adverse to a former client if the representation of the new client is "substantially related" to the attorney's representation of the former client. *Flatt v. Superior Court*, 9 Cal. 4th 275, 283 (1994). The Lunardis and Tierneys are, of course, adverse to Mr. Park in their attempts to purchase Mr. Swallow's shares, and Ms. Buck-Walsh is representing both the Lunardis and the Tierneys in this process. And, there are a number of ways in which Ms. Buck-Walsh's representation of the Tierneys and Lunardis is substantially related to her former representation of Mr. Park. The clearest examples are the very communications Ms. Buck-Walsh made to this Commission disparaging Mr. Park. As this Commission may recall, Ms. Buck-Walsh authored an 11-page, 22-exhibit letter in January 2016 arguing (1) why Mr. Park's agreement with Mr. Swallow violated the Gambling Control Act; (2) that suggestions Mr. Park made to the Lunardis in 2015 about changes they could make to GCI were noncompliant with the law, and (3) that Mr. Park exhibited a "cavalier" attitude that demonstrated a general disregard for compliance and transparency with the Bureau and Commission. (Jan. 4, 2016 Letter from Buck-Walsh to Commission at pp. 1-6, 8-10.) It is particularly troubling that Ms. Buck-Walsh makes these disparaging statements to the very regulatory body before which she previously defended Mr. Park.

Ms. Buck-Walsh also has been discussing Mr. Park to the DAG and to the Lunardis. As described above, she discussed Mr. Park's 2012 Stipulated, Settlement, Decision and Order with the DAG, notwithstanding the fact that she had defended Mr. Park during the Bureau's

investigation that led to that very settlement. Mr. Lunardi also essentially admitted in a sworn declaration that Ms. Buck-Walsh discussed confidential, privileged information about Mr. Park with him (although he claims that nothing she said "turn[ed] out to be factually incorrect." (Dec. of Pete V. Lunardi, *Park v. Law Offices of Tracey Buck-Walsh et al.*, No. SCV-259791, at p. 4 (Sonoma Cty. filed April 13, 2017).)

Mr. Park has filed an action in Sonoma County, Ms. Buck-Walsh's place of residence, to enjoin her from continuing to represent the Lunardis before the Bureau and Commission in this matter. In order to avoid the injunction, Ms. Buck-Walsh has repeatedly made demonstrably false statements under oath to the Sonoma Court about the scope of her representation. For instance, she stated that she "never discussed, commented upon or urged the denial of Park's application to become an owner-licensee in GCI" and that she only ever requested that the Commission "either take no action, or approve the Lunardi agreement," ***not*** that it reject the Park-Swallow agreement. (Dec. of Tracey Buck-Walsh, *Park v. Law Offices of Tracey Buck-Walsh et al.*, *supra*, at p. 2 ¶ 5; p. 4:15-17 (filed Feb. 16, 2017).) These sworn statements are demonstrably false, as the Commissioners know firsthand. (*See, e.g.*, Jan. 4, 2016 Letter from Tracey Buck-Walsh to Commission, *supra*.) Likewise, at a recent hearing in the Sonoma County action, Ms. Buck-Walsh testified under oath that the Bureau's 2011 Letter of Warning was a separate matter from the ensuing Accusation and Stipulated Settlement with the Bureau. (May 9, 2017 Tr., *Park v. Law Offices of Tracey Buck-Walsh et al.*, *supra*, at pp. 61, 68, 70-71.) She did this to argue that she could not possibly have learned anything during her prior representation of Mr. Park that is relevant to the 2012 Settlement. The Commission knows this is not true either.

Ms. Buck-Walsh made these statements to suggest to the Sonoma County court that she is merely urging the Commission to approve the Lunardis' application, without regard to Mr. Park. That suggestion is obviously false. Ms. Buck-Walsh's unethical representation of the Lunardis before the Bureau and the Commission has further tainted this process. That she has coordinated so closely with the DAG only makes it worse.[5]

[5] An example of this coordination occurred the day before the April 28, 2017 hearing on Mr. Park's motion for preliminary injunction. Ms. Buck-Walsh was arguing that Mr. Park's request for injunctive relief was moot because the Bureau would recommend approval of the Lunardis' application and likely not even consider Mr. Park's application. The day before the hearing, the Bureau issued its recommendation, while at the same time writing to Mr. Park's counsel that it would take no action on Mr. Park's application. The timing and content of the letters could not have been written or orchestrated any better for Ms. Buck-Walsh than if she had written and orchestrated them herself.

D. The DAG Has Overlooked Numerous Problems with the Lunardis' Application and Contemplated Transaction.

1. The DAG Has Overlooked the Lunardis' Improper and Misleading "Cooking of the Books" To Obtain a Loan from Comerica To Purchase Mr. Swallow's Shares.

Given the DAG's history of aiding the Lunardis, it is no surprise that the Bureau has now overlooked several glaring issues with respect to the current Lunardi-Tierney Application. For example, the Lunardis have engaged in an irregular, misleading accounting practice to seek a loan to purchase Mr. Swallow's shares. GCI's November 2015 financial statement showed a liability of approximately $12.1 million that represented the distributions owed to Mr. Swallow from the 2015 calendar year. (Garden City, Inc. Balance Sheet, Dec. 31, 2015 and 2014.) (The Lunardis received distributions of approximately $16.6 million that year, while Mr. Swallow received only $4.5 million due to the Bureau's restrictions. In order for GCI to maintain its S-Corp. status with the IRS, the distributions to Mr. Swallow must match the distributions to the Lunardis.) (*See* Feb. 24, 2017 Letter from SingerLewak LLP to Sa'id Vakili at p. 3.) Notwithstanding the liability owed to Swallow, the Lunardis moved that $12.1 million liability to retained earnings (*i.e.*, equity) in GCI's audited financial statement for the period ending December 31, 2015 – just one month later. (Garden City, Inc. Balance Sheet, Dec. 31, 2015 and 2014.) The Lunardis' obvious intent was to make GCI's (*i.e.* the Lunardis') financial position appear substantially stronger to their proposed lender so that the Lunardis could obtain the loan necessary to match Mr. Park's purchase agreement with Swallow. Generally Accepted Accounting Principles ("GAAP") required that the $12.1 million remain a liability on GCI's books.

After reviewing the financial statements, an independent accounting firm, SingerLewak, concluded that the Lunardis' handling of the liability was not only inconsistent with GAPP, but a "material misstate[ment]" of GCIs financial position. (Feb. 24, 2017 Letter from SingerLewak LLP to Sa'id Vakili at p.3.)

The submission of a misleading financial statement is not merely a concern of the lending institution. The same misleading information was submitted to the Bureau and should have been analyzed and investigated as part of the Bureau's analysis and recommendation. When considering a purchase agreement, the Commission "shall deny a license to any applicant who … suppl[ies] information that is untrue or misleading as to a material fact pertaining to the qualification criteria." Bus. & Prof. Code § 19859. Likewise, licensees "shall prepare financial statements covering all financial activities of that … gambling business … ***in accordance with***

generally accepted accounting principles." Cal. Code Reg. § 12313(a). Notwithstanding that this was pointed out to the Bureau, the DAG apparently has tried to whitewash it – not wanting to throw a wrench into the efforts of his chosen purchaser. Like so many other issues raised herein, the Commission should order an independent third party to investigate this to decide for itself whether the Lunardis have cooked their books.

2. The DAG Has Overlooked that the Tierneys Would Become Unlicensed Owners of GCI if their License Is Not Approved before the Lunardis Have To Close.

The Lunardis assigned a portion of their contemplated purchase of Mr. Swallow's shares to the Tierneys because the Lunardis apparently do not have sufficient capital to complete the purchase without help. The Tierneys, however, must be granted a license before they can become co-owners with the Lunardis. This creates a dilemma for the Lunardis, who are contractually compelled to complete the purchase within 90 days of the Commission's approval of their purchase agreement. (*See* Lunardi-Swallow Purchase Agreement at pp. 5-6 ¶ 4.1.) In fact, the Lunardis' agreement with Mr. Swallow expressly provides that, if they cannot close within 90 days, Mr. Swallow has the right to sell his shares to Mr. Park without prior notice to the Lunardis, and the Lunardis do not have the right to mount another right of first refusal attempt. (*See id.* at p. 9 ¶ 8.3.)

To fend off this result, the Lunardis and Tierneys exercised an Amendment to their Assignment Agreement. The Amendment provides that if the Tierneys do not receive their license before the Lunardis' 90 days expires, the Tierneys may loan $7 million to the Lunardis to enable the Lunardis to complete the purchase. (*See* Amendment No. 1 to Assignment Agreement, Feb. 10, 2017, ¶ 3.) This is improper and violates the Gambling Control Act because it provides, in essence, that the Tierneys will act as a funding source (*i.e.* owner) for GCI ***even if they are not approved by the Commission***. This is prohibited by section 19851 of the Gambling Control Act, which requires every owner (including a funding source) to obtain a state gambling license, and prohibits licensed owners from accepting funds from an unlicensed owner. *See* Bus. & Prof Code §§ 19851, 19901, 19905; Cal. Code Regs. § 12220(b)(16). *See also* San Jose Mun. Code §§ 16.32.510; 16.02.330**.** Disregarding this violation of the Gaming Control Act to approve the Lunardi-Tierney application cries out for further investigation. Why is the State intentionally overlooking a violation for the benefit of a private party to the detriment of another private party?

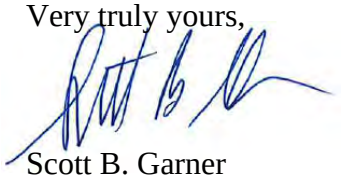
E. Approving the Tierneys' License Application Prior to a Final Ruling in Mr. Swallow's Interpleader Action May Permit them to Recover GCI's Earnings as Unlicensed Owners

GCI has filed an action against Mr. Swallow, interpleading $12.1 million in distributions to which Mr. Swallow claims he is entitled (as referenced above). That action has not yet been resolved. If the Commission were to approve the Tierneys, and the court in the interpleader action were to subsequently determine that GCI is entitled to that $12.1 million, it would implicate serious issues with respect to the Gambling Control Act. The Tierneys would be able to recover and reap the benefits of that $12.1 million, notwithstanding that GCI accumulated those earnings while the Tierneys were not licensed owners. (Likewise, the Lunardis would be able to recover a portion of that $12.1 million, notwithstanding that they were only endorsed as 50% owners at the time GCI accumulated that money, and the Lunardis already received their 50% share.) This provides an additional reason the Commission should delay consideration of the Lunardi-Tierney Application until the interpleader action is resolved.

CONCLUSION

The DAG has engaged in a two-year campaign to ensure that the Lunardis (and now Tierneys) walk away from the GCI Accusation with complete ownership of GCI. The process leading to the Bureau's recommendation of approval has been so tainted that it cannot be considered a satisfactory analysis of the merits of the Lunardi-Tierney Application. The Commission is the only body that can prevent the DAG from being the sole person who gets to pick winners and losers. Accordingly, Mr. Park strongly urges the Commission to reject the Bureau's tainted recommendation, and withhold action on the Lunardi-Tierney Application until the Attorney General has concluded its investigation into the DAG's improper conduct. In the alternative, the Commission should withhold action until after an independent third party has conducted an independent investigation of the issues outlined above.

Very truly yours,



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