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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
DOCKET # SUCR2012-10348

COMMONWEALTH

v.

TIMOTHY P. CAHILL

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**JOINT DISPOSITION AGREEMENT PURSUANT TO G.L. c. 276, § 87**

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The Commonwealth ("Commonwealth") and Defendant Timothy P. Cahill ("Cahill" or "Defendant") hereby file this JOINT DISPOSITION AGREEMENT PURSUANT TO G.L. c. 276, § 87. In entering into this Agreement, both parties acknowledge that on April 2, 2012 a Grand Jury returned criminal indictments against Cahill for Procurement Fraud (2012-10348-001), Using his Official Position to Obtain an Unwarranted Privilege (2012-10348-002), Conspiracy to Use his Official Position to Obtain an Unwarranted Privilege (2012-10348-003), and Conspiracy to Commit Procurement Fraud (2012-10348-004). The Commonwealth moved for trial on the two conspiracy charges, which trial took place from October 31, 2012 to December 12, 2012. A mistrial was declared on December 12, 2012 when, following deliberations over a six day period, the jury was unable to reach a verdict.

In lieu of the Commonwealth moving for trial on Indictments 2012-10348-001 and 2012-10348-002, or moving for re-trial on Indictments 2012-10348-003 and 2012-10348-004, and for purposes of reaching a negotiated disposition of this prosecution, the Commonwealth and Cahill agree as follows:

Cahill admits to the civil violation set forth in the Agreed-Upon Facts and Law summarized below, and the parties jointly request that Cahill be placed on pre-trial probation in contemplation of dismissal of the criminal charges, pursuant to G.L. c. 276, § 87, on the terms set forth herein, in full resolution of his criminal case.

**Agreed-Upon Facts and Law**

- 1) Cahill was Treasurer and Receiver-General of the Commonwealth from January 2003 until January 2011. As Treasurer, he was also Chairman of the Massachusetts State Lottery Commission ("Lottery").
- 2) In September 2009, Cahill announced he was running as an independent candidate for Governor.
- 3) In July and August 2010, Cahill moved ahead with preparations for campaign financed gubernatorial TV ads to run from late August through the November 2<sup>nd</sup> general election.
- 4) At the same time, Cahill authorized an approximate \$1.5 million publicly funded Lottery Permission TV and radio advertising campaign.<sup>1</sup>
- 5) The Lottery's Permission TV ads touted its success and good management and began airing on September 29, 2010, directly overlapping in content, timing, and media markets with Cahill's gubernatorial campaign TV ads, some of which promoted his association with, and good management of, the Lottery.

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<sup>1</sup> "Permission" advertising is a Lottery message that is designed to give people "permission" to play the Lottery by informing them that the Lottery gives back money to the 351 cities and towns of Massachusetts. The goal of the Permission message is to make people feel good about playing the Lottery, because, regardless of whether they win or lose, their city or town wins in the form of increased local aid.

- 6) The Lottery's Permission TV and radio ads were scheduled to run from September 29, 2010 to November 30, 2010 (overlapping with the final five weeks of Cahill's gubernatorial campaign) at a total cost of \$1,493,527.46, or approximately 75% of the Lottery's \$2 million advertising appropriation for all of fiscal 2011 (July 1, 2010 to June 30, 2011), but ultimately only ran until on or about October 14, 2010 at a total cost of \$600,986.79.
- 7) The Massachusetts State Ethics Commission ("Ethics") and the Massachusetts Office of Campaign and Political Finance ("OCPF") offer advice and guidance on the conflict-of-interest (G.L. c. 268A) and campaign finance (G.L. c. 55) laws, respectively. At no time did Cahill, or anyone on his behalf, obtain advice or guidance from either agency establishing a legitimate basis for running Lottery ads promoting its success and good management while Cahill's campaign ads were at the same time promoting a similar message.
- 8) G.L. c. 268A, § 23(b)(2)(ii) prohibits a state official from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.
- 9) Cahill's actions in connection with the timing of the Lottery permission ads gave rise to an appearance of impropriety. In running the Permission ads at the same time as his gubernatorial ads Cahill's conduct gave rise to the appearance, and he knew or should have known, that he was attempting to use his official position to secure for himself an unwarranted privilege of substantial value not properly available to his fellow similarly-situated gubernatorial candidates.

### Conditions of Pre-Trial Probation

In lieu of further criminal prosecution, the parties agree to the imposition of the following conditions of pre-trial probation, pursuant to G.L. c. 276, § 87, but only if so ordered by the court in full. The imposition of any of these conditions separately, or if any condition is modified over the objection of either party, shall void the Agreement.

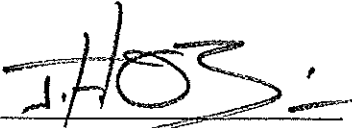
1. The Defendant shall be placed on pre-trial probation for a period of no more than four (4) years nor less than eighteen (18) months from the date of the court's Order.
2. In full and final compromise of such restitution amounts as may be owed the Lottery, the Defendant shall make payment to the Commonwealth of \$100,000 in satisfaction of his pre-trial probation, paying no less than \$25,000 per year, the full annual amount to be due no later than the anniversary date of the Order for Pre-Trial Probation each year, or in such installments during the course of each year as the Probation Department approves. Payment of the full \$100,000, if made at any point after the first eighteen (18) months of probation, shall terminate pre-trial probation.
3. The Defendant shall not seek election to or accept an elective public office, nor seek or accept any other public office or employment, while on pre-trial probation.

Completion of all conditions of probation shall result in the underlying criminal charges being dismissed at the conclusion of the probation period. A violation of any condition shall result in the case being placed back on the trial track.


Agreement for Payment

The parties agree that, in consideration of the Commonwealth's agreement to request the placement of Cahill on pre-trial probation, his obligation to make the payments specified above shall constitute not only a term of pre-trial probation but also, and contingent upon the Court's decision to order such pre-trial probation, a separate agreement between the parties, enforceable by a separate action in Suffolk Superior Court.

MARTHA COAKLEY  
ATTORNEY GENERAL

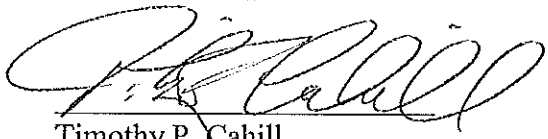
  
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TIMOTHY P. CAHILL  
PERSONALLY

Date: 3/1/13

  
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ORDER FOR PRE-TRIAL PROBATION

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At the request of the Commonwealth and Defendant Timothy P. Cahill, and pursuant to G.L. c. 276, § 87, it is hereby ORDERED that:

1. The Defendant shall be placed on pre-trial probation for a period of no more than four (4) years nor less than eighteen (18) months from this date.

2. In full and final compromise of such restitution amounts as may be owed the Lottery, the Defendant shall make payment to the Commonwealth of \$100,000 in satisfaction of his pre-trial probation, paying no less than \$25,000 per year, the full annual amount to be due each year no later than the anniversary date of the Order for Pre-Trial Probation, or in such installments during the course of each year as the Probation Department approves. Payment of the full \$100,000, if made at any point after the first eighteen (18) months of probation, shall terminate pre-trial probation.

3. The Defendant shall not seek election to or accept an elective public office, nor seek or accept any other public office or employment, while on pre-trial probation.

Date:

3/1/2013



Christine M. Roach  
Associate Justice of the Superior Court