

AFFIDAVIT IN SUPPORT OF COMPLAINT AGAINST: PHILLEMONT LETWABA

I, the undersigned,

STEFANIE FICK

do hereby make oath and state:

1. I am an adult female and Head of the Accountability Division of the Organisation Undoing Tax Abuse (“OUTA”) with its business address situated at 10th Floor, O’Keeffe & Swartz Building, Oak Avenue, Ferndale, Randburg.

1.1. I am fully authorised to depose to this affidavit.

1.2. The contents of this affidavit fall within my personal knowledge, unless stated otherwise, and are in all aspects true and correct.

A MANDATE

2. The complainant, OUTA, is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers’ money in South Africa.

B INTRODUCTION

3. During the course of 2019, OUTA conducted an investigation into a series of irregularities pertaining to the Pro-Active Funding Model (“PAF”)



implemented by the National Lotteries Commission (“NLC”). In our preliminary findings, we have established a reasonable suspicion that the so-called PAF is being utilised in an illegal manner without the proper executive oversight.

4. As part of its investigation, OUTA has identified the involvement of Mr Phillemon Letwaba (“Letwaba”), Chief Operational Officer (“COO”) of the NLC, however, OUTA has been advised that Letwaba has since been placed on leave of absence. Letwaba is also a qualified Chartered Accountant (“CA”) and accordingly subjected to the relevant codes as established by the South African Institute for Chartered Accountants (“SAICA”).
5. OUTA has reason to believe that Letwaba’s conduct while performing his duties as COO of the NLC is in contravention of the Code of Professional Conduct of the South African Institute of Chartered Accountants, as revised (“the Code”) and the South African Institute of Chartered Accountants By-Law (“By-Law”). OUTA submits that its submission to the SAICA reflects clear instances of improper conduct by Letwaba.

C PARTICULARS OF MEMBER AGAINST WHOM THE COMPLAINT IS LAID

6. Letwaba, whose identity- and membership number is unknown to the complainant, is a qualified CA and a registered member of SAICA. Letwaba joined the SAICA Northern Region on or about 3 October 2011.

D CONDUCT BY LETWABA IN THE POSITION OF COO OF THE NLC

7. It should be noted that the NLC is a public entity, and as such, subjected to the Public Finance Management Act, 1999 (“PFMA”). In considering the illustrations of Letwaba’s conduct below, it should be bourn in mind that Letwaba is part of the NLC’s Accounting Authority in terms of section 49(2)(a) of the PFMA. The functions of an Accounting Authority cannot not

be construed lightly as the provisions of the PFMA encompass strict fiduciary duties and responsibilities on Accounting Authorities.¹

8. On 6 November 2018, the NLC approved an application made by a purported charitable entity, Zibsifusion NPC, for a grant allocation of R10,000,000.00 (TEN MILLION RAND), under project number 113081, purportedly for a charitable cause in line with the PAF model. A copy of the award letter from the NLC is attached hereto and marked **ANNEXURE “OUTA_A”**.
9. Subsequently, and on the same day on which the letter of award had been transmitted by the NLC, a grant agreement was entered into between the NLC and Zibsifusion of which the latter is cited as the grantee. A copy of the grant agreement is attached hereto and marked **ANNEXURE “OUTA_B”**.
10. Following the conclusion of the grant agreement on 6 November 2018, an amount of R7,000,000.00 was deposited into a First National Bank (“FNB”) account, account number 62761401315 on 21 November 2019. The balance of R3,000,000.00 was deposited into the above-mentioned account on 4 April 2019. The payment sequence is stipulated as to be paid in tranches, namely “Tranche 1” and “Tranche 2” respectively as reflected in paragraph 4 of **ANNEXURE “OUTA_C”**.
11. The account from which the deposits had been made is conclusively that of the NLC’s. Of particular interest is the fact that the payments had been divided into the so-called tranches, effectively breaking two distinct payments into payment less than R10,000,000.00 respectively.
12. In this regard, it should also be noted that tranche-based payments cannot reasonably be justified in terms of the grant agreement as the description thereof is fictional.² In the ordinary course of business, tranche payments are utilised to guarantee delivery by a contracting party. In this instance,

¹ See sections 50 and 51 of the PFMA.

² See paragraph 4 of the grant agreement.

Zibsifusion did not deliver a “*satisfactory progress report*” prior to the receipt of the second tranche payment. It is thus reasonable to conclude that this practice amounts to smurfing.

13. OUTA has established that Letwaba has peculiar relationships with various grant beneficiaries, which constitutes a conflict of interest. Similar to the grant agreement awarded to Zibsifusion, the NLC also awarded a grant agreement to another purported charitable organisation known as I am Made for God’s Glory (“IAMFGG”) on 9 April 2018.
14. The grant agreement was accordingly signed by Letwaba in his capacity as COO of the NLC on 12 April 2018. A total amount of R11,375,000.00 was subsequently paid to IAMFGG for the development of a sports facility, however, OUTA has established that such facility has yet to be finalised. During its investigation, OUTA determined that a certain percentage of the grant funding paid to IAMFGG has been redistributed from the latter’s bank account, to an entity known as UpBrand Properties.
15. Although UpBrand Properties did not receive funds directly from the NLC in terms of its proactive funding model, it nevertheless benefitted from the funds that were paid to the various charitable organisations, including that of IAMFGG. The current and sole director of UpBrand Properties is a certain Kenneth Tomoletso Sithole (“Sithole”), who is Letwaba’s first cousin.
16. OUTA contends that Letwaba abused his position as COO of the NLC to facilitate the awarding of NLC grant agreements to entities that would ultimately transfer grant funding to entities (UpBrand Properties) in which Letwaba has either a direct or indirect interest.
17. Due the criminal nature of the conduct in question and *prima facie* evidence suggesting acts of corruption and racketeering, OUTA accordingly laid two criminal complaints against the NLC with the South African Police Service (“SAPS”), under CAS numbers 454/7/2020 and 455/7/2020. For ease of

reference, copies of OUTA's criminal complaints are attached hereto and marked **ANNEXURE "OUTA_D"** and **"OUTA_E"** respectively.³

E UPBRAND PROPERTIES AND LETWABA'S CONFLICT OF INTEREST

18. Upon investigating the origins and nexus between UpBrand Properties and Letwaba, OUTA determined that the former had affected payments from its business account(s) to entities in which Letwaba has a substantial interest as well as to Letwaba himself. In this regard, banks statements of UpBrand Properties for the period of July 2017 to January 2019 are attached hereto and marked **ANNEXURE "OUTA_F"**.
19. As apparent from the bank statements, payments were affected to the following entities with whom Letwaba is either directly or indirectly affiliated:
 - 19.1. Ironbridge Travelling Agency and Consultants;
 - 19.2. PKT Consulting Engineers;
 - 19.3. Redtaq;
 - 19.4. Letwaba Holdings;
 - 19.5. Letwaba Energy; and
 - 19.6. Kaone Wethu
20. It should be noted that Ironbridge Travelling Agency and Consultants' directors are Retobile Malomane and Keneilwe Constance Maboja, the latter of which is also Letwaba's first cousin. Former directors include Karabo Charles Sithole and Thabo Elias Letwaba, the latter being Letwaba's younger sibling. Funds were also received form Letwaba Energy, of which the active director is Bontle Daisy Letwaba, Letwaba's wife. Letwaba is a former director of this entity.
21. Funds were also received under the line items containing *"Mosokodi"* which possibly refers to Mosokodi Farming Projects and/or Mosokodi Water

³ Following the submission of OUTA's criminal complaints, OUTA was informed that the complaints were transferred to SAPS station: Sunnyside for further investigation.

Solutions and Drilling. The active director of Mosokodi Farming Projects is Bontle Daisy Letwaba, however, Letwaba is a former director of this entity.

F LEGAL AND REGULATORY FRAMEWORK

CODE OF PROFESSIONAL CONDUCT OF THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS (REVISED 2018)

22. In terms of **section 110.1 A1**, read together with **R110.2**, a CA shall comply with the following principles:

“(a) Integrity – to be straightforward and honest in all professional and business relationships.

(b) Objectivity – not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others.

(c) Professional Competence and Due Care – to:

(i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and

(ii) Act diligently and in accordance with applicable technical and professional standards.

(d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships.

(e) Professional Behaviour – – to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.”

INTEGRITY

23. In terms of **R111.1**, A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships.
24. **R111.2** states that a professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:
- 24.1. Contains a materially false or misleading statement;
 - 24.2. Contains statements or information provided recklessly; or
 - 24.3. Omits or obscures required information where such omission or obscurity would be misleading.
25. **R111.3** states that when a professional accountant becomes aware of having been associated with information described in **R111.2**, the professional accountant shall take steps to be disassociated from that information.

OBJECTIVITY

26. A professional accountant shall in terms of **R112.1**, comply with the principle of objectivity, which requires a professional accountant not to compromise professional or business judgement because of bias, conflict of interest or undue influence of others.
27. In terms of **R112.2**, a professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the professional accountant's professional judgement regarding that activity.

PROFESSIONAL BEHAVIOUR

28. In terms of **R115.1**, A professional accountant shall comply with the principle of professional behaviour, which requires a professional accountant to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession. A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles.

SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS BY-LAW

29. In terms of section 35 of the SAICA By-Law, the following acts and practices, as applicable, constitute an offence by the member in question when:

- 29.1. In terms of **section 35.1.1**, conducting himself or herself with gross negligence in connection with any work performed by him or her in his or her profession or employment, including (without limitation) work or employment in connection with secretaryships, trusteeships, liquidations, judicial managements, executorships, administratorships or curatorship's, or any office of trust which he or she has undertaken or accepted;
- 29.2. In terms **section 35.1.9**, wilfully refusing or failing to perform or conform with any of the provisions of these By-laws which it is his or her duty to perform or with which it is his or her duty to conform;
- 29.3. In terms of **section 35.1.10**, committing a breach of any rule or Code of Professional Conduct prescribed by the Board from time to time in terms of By-law 25 or, after having been previously warned by the Board or any committee appointed by it, continuing to commit a breach of such rules or Code of Professional Conduct;
- 29.4. In terms of **section 35.1.12**, conducting himself or herself in a manner which, in the opinion of the Professional Conduct Committee or the Disciplinary Committee, is discreditable, dishonourable, dishonest, irregular or unworthy, or which is derogatory to the




Institute, or tends to bring the profession of accountancy into disrepute; and

29.5. In terms of section **35.1.13**, failing to comply with any regulation, By-law or Code of Conduct.

G CONCLUSION

30. Having regard to the legal and regulatory framework as set out above, Letwaba is in contravention of the Code of Professional conduct, in that:

30.1. Letwaba failed to act with integrity by awarding and/or approving grant agreements while in his position as COO to various grant beneficiaries, with the knowledge that the awarding of such agreements would benefit him directly and/or indirectly (**R111.1**);

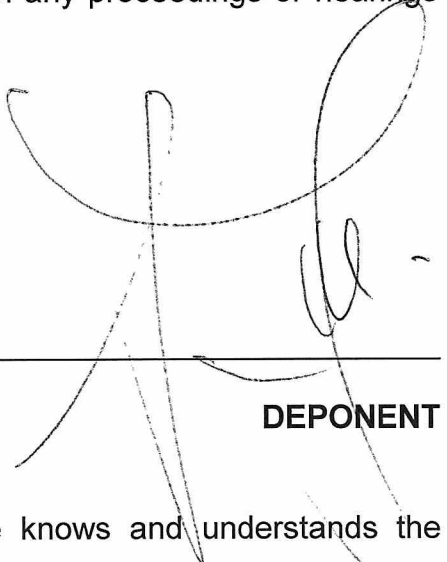
30.2. Letwaba failed to take the appropriate steps to inform the relevant authorities, executive, treasury or regulatory body of his conflict of interest in relation to the grant beneficiaries and further failed to disassociate himself with such entities (**R111.3**);

30.3. Letwaba's awarding and/or approval of grant agreements to beneficiaries from which he would directly and/or indirectly benefit compromised the principle of objectivity as such grant agreements were awarded and/or approved for an ulterior purpose and motive (**R112.1 & R112.2**); and

30.4. Letwaba's abuse of his position as COO in the awarding and/or approval of the grant agreement has put the accountancy profession in disrepute (**R115.1**).

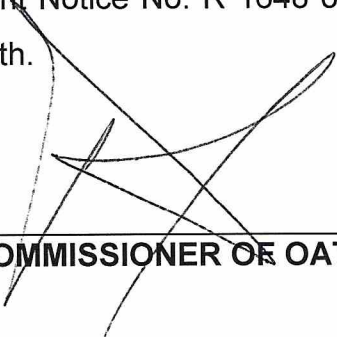
31. Accordingly, OUTA calls for the SAICA Professional Conduct Committee and/or the Disciplinary Committee to pursue an investigation into the improper conduct of Letwaba as set out above. OUTA further affirms that it

will assist the SAICA on a continuous basis in any proceedings or hearings that may transpire from this submission.



DEPONENT

The Deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and sworn to before me at Rooi E Pookry on this the 26th day of AUGUST 2020 the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.



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