

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MEEHANCOMBS GLOBAL CREDIT  
OPPORTUNITIES MASTER FUND, LP, *et al.*,

Plaintiffs,

v.

CAESARS ENTERTAINMENT CORP. and  
CAESARS ENTERTAINMENT OPERATING  
CO., INC.,

Defendants.

No. 14-cv-07091 (SAS)

**CAESARS ENTERTAINMENT CORPORATION'S LOCAL CIVIL RULE 56.1  
RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS  
AND COUNTER-STATEMENT OF MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1(b) of the Local Rules of the United States District Court for the Southern District of New York, Defendant Caesars Entertainment Corporation ("CEC") respectfully submits (A) responses to Plaintiffs MeehanCombs Global Credit Opportunities Master Fund, LP, Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust, and Trilogy Portfolio Company, LLC's (collectively, "MeehanCombs") statement of material facts and (B) CEC's counter-statement of material facts.

**CEC's Responses to Plaintiffs' Statement of Material Facts**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied. CEC refers the Court to the contents of the document referenced in paragraph 5, which, as is relevant here, provides that CEC's private equity sponsors have the

power to elect CEC's directors. (Report on Form 10-Q (period ending June 30, 2015), at 33, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-15-146>.)

6. Denied. CEC refers the Court to the contents of the document referenced in paragraph 6, which, as is relevant here, provides that on January 28, 2008, CEC was acquired by affiliates of Apollo Global Management, LLC ("Apollo") and TPG Capital, LP ("TPG") in a leveraged buyout transaction. (Novod Decl. Ex. D (Def. CEC's Resps. & Objections to Pls.' First Set of Reqs. For Admis.) at Nos. 12, 13 (Oct. 23, 2015) [*Danner* Dkt. No. 63-4].)

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted, except denied to the extent that the statement asserts that CEC guaranteed the payment of principal and interest on Caesars Entertainment Operating Company's ("CEOC") 6.50% Senior Unsecured Notes due 2016 (the "2016 Notes") when that guarantee has been properly released and/or terminated pursuant to the terms of the Indenture dated June 9, 2006 (the "2016 Notes Indenture") governing the 2016 Notes. (Pierce Decl. Ex. A (2016 Notes Indenture) §§ 902, 1503(3); Ex. G (First Supplemental Indenture).)

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Denied. Section 508 of the 2016 Notes Indenture states:

Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

(Pierce Decl. Ex. A (2016 Notes Indenture) § 508.)

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted, except denied to the extent that the statement asserts that the noteholders that entered into the Note Purchase and Support Agreement on August 12, 2014 (the “Majority Noteholders”) [REDACTED]

[REDACTED]. (Declaration of Jonathan H. Hurwitz in Support of CEC’s Opposition to Plaintiffs’ Motions for Partial Summary Judgment (“Hurwitz Decl.”) Ex. J (Dietderich Dep. Tr.) at 61:10-19, 68:21-69:7.)

37. Admitted.

38. Denied to the extent that the statement asserts that CEC’s parent guarantees on the 2016 Notes and 2017 Notes were not released as a result of the sale of 5% of CEOC’s stock on May 5, 2014 (the “5% Stock Sale”) and/or the transfer of 6% of CEOC’s stock to an employee benefit plan on May 30, 2014 (the “6% Stock Transfer”). (Sambur Decl. ¶¶ 11-15 (Jul. 24, 2015) [*BOKF* Dkt. No. 40]; Mem. of Law in Supp. of Mot. to Dismiss at 6 (Nov. 12, 2014) [*MeehanCombs* Dkt. No. 17; *Danner* Dkt. No. 9]; Answer to *MeehanCombs* Am. Compl. at 23 (Feb. 12, 2015) [Dkt. No. 35]; Answer to *Danner* Am. Compl. at 14 (Feb. 25, 2015) [Dkt. No. 29]; Report on Form 8-K (May 6, 2014) at Item 1.02 & Ex. 99.3, available at <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-185140&CIK=858339>; Report on Form 8-K (May 7, 2014) at Ex. 99.1, available at <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-53&CIK=858339>; Report on Form 8-K (May 30, 2014) at Ex. 99.1, available at <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-70&CIK=858339>; Report on Form 8-K (June 27, 2015) at Item 8.01, available at <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-253424&CIK=858339>; Report

on Form 8-K (Aug. 22, 2014) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-318859&CIK=858339>.)

39. Admitted, except denied to the extent that the statement asserts that CEC's parent guarantees on the 2016 Notes and 2017 Notes were not released as a result of the sale of 5% of CEOC's stock on May 5, 2014 (the "5% Stock Sale") and/or the transfer of 6% of CEOC's stock to an employee benefit plan on May 30, 2014 (the "6% Stock Transfer"). (Sambur Decl. ¶¶ 11-15 (Jul. 24, 2015) [*BOKF* Dkt. No. 40]; Mem. of Law in Supp. of Mot. to Dismiss at 6 (Nov. 12, 2014) [*MeehanCombs* Dkt. No. 17; *Danner* Dkt. No. 9]; Answer to *MeehanCombs* Am. Compl. at 23 (Feb. 12, 2015) [Dkt. No. 35]; Answer to *Danner* Am. Compl. at 14 (Feb. 25, 2015) [Dkt. No. 29]; Report on Form 8-K (May 6, 2014) at Item 1.02 & Ex. 99.3, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-185140&CIK=858339>; Report on Form 8-K (May 7, 2014) at Ex. 99.1, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-53&CIK=858339>; Report on Form 8-K (May 30, 2014) at Ex. 99.1, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-70&CIK=858339>; Report on Form 8-K (June 27, 2015) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-253424&CIK=858339>; Report on Form 8-K (Aug. 22, 2014) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-318859&CIK=858339>.)

40. Admitted, except denied to the extent that the statement asserts that CEC had not previously disclosed that its guarantee on the 2016 Notes was independently released in May 2014 or that CEC did not disclose, in connection with the transaction consummated on August 22, 2014 itself (the "August Transaction"), that the guarantee had previously and independently

been released. (Report on Form 8-K (May 6, 2014) at Item 1.02 & Ex. 99.3, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-185140&CIK=858339>; Report on Form 8-K (May 7, 2014) at Ex. 99.1, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-53&CIK=858339>; Report on Form 8-K (May 30, 2014) at Ex. 99.1, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-70&CIK=858339>; Report on Form 8-K (June 27, 2015) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-253424&CIK=858339>; Report on Form 8-K (Aug. 22, 2014) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-318859&CIK=858339>.)

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

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48. Admitted.

49. Admitted.

50. Admitted.

51. Admitted, except denied to the extent that the statement asserts that the business of Blackstone Advisory Partners L.P. (“Blackstone”) is limited to restructuring advisory services, (*see* The Blackstone Group L.P. Report on Form 10-K (fiscal year ended December 31, 2014) at

9-10, *available at* <http://d11ge852tjjqow.cloudfront.net/CIK-0001393818/ee32be8c-1caf-4f70-b92c-6cbb1f104abf.pdf>); that Blackstone was engaged prior to the 5% Stock Sale as a “restructuring advisor”; that Blackstone’s engagement prior to the 5% Stock Sale was limited to providing “restructuring” advisory services; that any such “restructuring” on which Blackstone may have advised constituted a “restructuring” for purposes of Section 316(b) of the Trust Indenture Act of 1939 (the “TIA”); or that the 5% Stock Sale was itself undertaken as part of a “restructuring” for purposes of Section 316(b).

52. Admitted, except denied to the extent that the statement asserts that all of the potential investors identified in connection with the marketing and sales process for the 5% Stock Sale owned CEC common stock, or that any potential financial gain on CEC stock would have provided the only commercial purpose for potential purchasers to participate in the transaction. (Hurwitz Decl. Ex. H (Blackstone Presentation) at 6, Ex. K (Genereux Dep. Tr.) at 106:7-107:2.)

53. Admitted, except denied to the extent that the statement asserts that Blackstone did not believe that “some investors may ascribe option value to the CEOC common stock” that could not be “reliably quantified” at the time. (Hurwitz Decl. Ex. H (Blackstone Presentation) at 5, Ex. K (Genereux Dep. Tr.) at 106:7-107:2.)

54. Admitted.

55. Admitted.

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67. Admitted.

68. Admitted.

69. Admitted.

70. Admitted, except denied to the extent that the statement asserts that all recipients of CEOC stock in the 6% Stock Transfer were officers or directors of the company. (Report on Form 8-K (June 27, 2014) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-253424&CIK=858339>.)

71. Admitted.

72. Admitted.

73. Admitted.

74. Admitted.

75. Admitted, except denied to the extent that the statement asserts that any CEC guarantee of CEOC notes that had previously been in effect had not already been released as a result of the 5% Stock Sale at the time the 6% Stock Transfer was completed. (*See Response to ¶ 38.*)



76. Admitted, except denied to the extent that the statement asserts that Wilfong viewed the stock at all times as having no economic value. Wilfong recognized that the CEOC shares had option value at the time of the 6% Stock Transfer, and referred to them as “worthless” because the shares were not listed on an exchange and, later on, because CEOC had filed for bankruptcy. (Hurwitz Decl. Ex. G (Wilfong Dep. Tr.) at 50:19-51:20, 52:2-53:10, 133:22-134:9.)

77. Admitted.

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. Admitted.

83. Admitted.

84. Admitted.

85. Denied. Law Debenture Trust Company of New York was appointed as successor indenture trustee for the 2016 Notes on July 29, 2014. (Report on Form 8-K (July 29, 2014) at Item 7.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-285256&CIK=858339>.)

86. Admitted.

87. Admitted.

88. Admitted.

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted.

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted.

98. Admitted.

99. Admitted.

100. Admitted.

101. Admitted, except denied to the extent that the statement asserts that the investors that obtained CEOC stock in the 5% Stock Sale were ineligible to vote in director elections until after the 6% Stock Transfer or that the Board of Directors itself did not have the ability to elect directors where there was a vacancy that resulted from an increase in the number of directors, from the death, resignation or removal of any director, or from any other cause. (Amended and Restated Certificate of Incorporation of CEOC (“CEOC Certificate of Incorporation”) at § 8.4, *available* *at*  
<http://www.sec.gov/Archives/edgar/data/858339/000119312514185140/d721045dex31.htm>;  
CEOC Bylaws at Art. II, § 5, *available at* <http://investor.caesars.com/corporate-governance-document.cfm?DocumentID=14608>.)

102. Admitted, except denied to the extent that the statement asserts that investors who obtained CEOC shares in the 5% Stock Sale and the 6% Stock Transfer are ineligible to vote in director elections or that the Board of Directors itself does not have the ability to elect directors

where there is a vacancy that results from an increase in the number of directors, from the death, resignation or removal of any director, or from any other cause. (CEOC Certificate of Incorporation at § 8.4; CEOC Bylaws at Art. II, § 5.)

103. Denied. Six of the current members of CEOC's Board of Directors were elected by the CEOC Board itself. (Report on Form 8-K (June 27, 2014) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-253438&CIK=858395>.)

104. Denied. Six of the current members of CEOC's Board of Directors were elected by the CEOC Board itself. (Report on Form 8-K (June 27, 2014) at Item 8.01, *available at* <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-253438&CIK=858395>.)

105. Denied. CEC refers the Court to the contents of the documents referenced in paragraph 105, which, as is relevant here, provide that elections of directors and any other question brought before any meeting of stockholders "shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote thereat" and that "[e]ach stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder, unless otherwise provided by the Certificate of incorporation." (CEOC Certificate of Incorporation at § 8.1; CEOC Bylaws at Art. II, § 5.)

106. Admitted, except denied to the extent that the statement asserts anything other than that "so long as CEC and/or any of its affiliates owns or controls a majority in voting power of the outstanding capital stock of the Corporation entitled to vote, any action to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding Common Stock having not less than the minimum

number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Common Stock entitled to vote thereon were present and voted and shall be delivered to the Corporation.” (CEOC Certificate of Incorporation at § 6.1.)

107. Admitted, except denied to the extent that the statement asserts that CEC has the power to ratify action taken by CEOC other than by voting in its capacity as a stockholder to ratify a contract, transaction or act of CEOC at any annual meeting of stockholders, or at any special meeting of the stockholders. (CEOC Certificate of Incorporation at § 10.2.)

108. Admitted, except denied to the extent that the statement asserts that any CEOC shareholder may designate members of CEOC’s Board other than through voting shares in a director election. (CEOC Certificate of Incorporation at Article VIII; CEOC Bylaws at Art. II, § 5.)

109. Admitted, except denied to the extent that the statement asserts that any CEOC shareholder has any veto or approval rights over extraordinary actions, such as asset sales, mergers, acquisitions, charter amendments, securities offerings, stock repurchases, or incurrence of debt, other than through participation in a shareholder vote. (CEOC Certificate of Incorporation at Article VIII; CEOC Bylaws at Art. II, § 5.)

110. Denied. CEC refers the Court to the contents of the documents referenced in paragraph 110, which, as is relevant here, provide that one of the 5% Stock Sale purchasers could recall voting its shares only at annual meetings and in line with management recommendations and that the other two purchasers could not recall exercising their voting rights with respect to either their shares in CEC or CEOC. (Pierce Decl. Ex. I (Wallach Dep. Tr.) at 147:13-148:3; Pierce Decl. Ex. J. (Dhingra Dep. Tr.) at 267:22-268:5, 268:16-18; Pierce Decl. Ex. K (Roselli Dep. Tr.) at 300:18-301:2.)

111. Admitted.

112. Admitted, except denied to the extent that the statement asserts that a special meeting of stockholders of CEOC may be called in any manner other than by a majority of the Board of Directors. (CEOC Certificate of Incorporation at § 6.2.)

113. Admitted, except denied to the extent that the statement asserts that any CEOC shareholders may designate members of CEOC's Board other than through voting shares in a director election. (CEOC Certificate of Incorporation at Article VIII; CEOC Bylaws at Art. II, § 5.)

114. Admitted, except denied to the extent that the statement asserts that any CEOC shareholder has any veto or approval rights over extraordinary actions, such as asset sales, mergers, acquisitions, charter amendments, securities offerings, stock repurchases, or incurrence of debt, other than through participation in a shareholder vote. (CEOC Certificate of Incorporation at Article VIII; CEOC Bylaws at Art. II, § 5.)

115. Admitted, except denied to the extent that the statement asserts that a special meeting of stockholders of CEOC may be called in any manner other than by a majority of the Board of Directors. (CEOC Certificate of Incorporation at § 6.2.)

116. Admitted, except denied to the extent that the statement asserts that the language quoted therein constituted the only disclosure made. (Report on Form 10-K (fiscal year ended December 31, 2013), *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-14&CIK=858339>.)

117. Admitted.

118. Admitted, except denied to the extent that the statement asserts that the language quoted therein constituted the only disclosure made. (Report on Form 10-Q (period ended

September 30, 2014), *available at* <http://investor.caesars.com/secfiling.cfm?filingID=858339-14-108&CIK=858339>.)

119. Admitted.

120. Admitted.

121. Admitted.

122. Admitted.

### **CEC's Counter-Statement of Material Facts**

#### **CEC and CEOC**

1. CEC and its subsidiaries, including Caesars Entertainment Operating Company, Inc. ("CEOC"), own, operate, or manage approximately 50 casinos in 14 U.S. states and five countries. (Declaration of David B. Sambur in Support of CEC's Opposition to Plaintiffs' Motions for Partial Summary Judgment ("Sambur Decl.") ¶ 3.)

2. On January 28, 2008, investment funds affiliated with Apollo Global Management, LLC and TPG Capital, along with co-investors, acquired CEC (then known as Harrah's Entertainment) and its subsidiaries. (Sambur Decl. ¶ 3.)

3. CEC is currently a publicly traded company with a market capitalization of approximately \$1.1 billion. (Sambur Decl. ¶ 3.)

4. CEOC filed for bankruptcy under Chapter 11 of the Bankruptcy Code on January 15, 2015. (Sambur Decl. ¶ 3.)

5. CEOC's bankruptcy stemmed from economic factors and industry trends that were unforeseen in 2008. These included the recession, changing consumer preferences in the gaming industry, and increased competition for gaming dollars resulting from a rise in the number of casinos in various states. (Sambur Decl. ¶ 4.)

6. In response to these business challenges, CEC, CEOC, and other subsidiaries and affiliates of CEOC engaged in over 45 capital market transactions including asset sales, exchange and tender offers, debt repurchases, and loan re-financings. (Sambur Decl. ¶ 4.)

7. These transactions were undertaken to inject cash into CEOC, to deleverage CEOC's balance sheet, to build room in CEOC's bank maintenance covenant, and to extend outstanding debt maturities, all in an effort to position CEOC to deleverage as its business performance improved. They enabled CEOC to repay more than \$8 billion of principal and interest to its creditors. (Sambur Decl. ¶ 4.)

8. Certain of these transactions took place over the course of 2013 and 2014. These include: (1) the refinancing of certain CMBS debt secured by non-CEOC properties in October 2013, which involved the sale by CEOC to Caesars Entertainment Resort Properties LLC ("CERP") of two properties that were included as additional collateral for certain new loans to CERP; (2) the formation of Caesars Acquisition Company ("CAC") and Caesars Growth Partners ("CGP"), which involved both the sale in October 2013 by CEOC to CGP of two properties and the contribution in October 2013 by subsidiaries of CEC to CGP of interests in Caesars Interactive Entertainment; and (3) the sale by CEOC of four properties to CGP in May 2014. (Sambur Decl. ¶ 5.)

9. The transactions described in paragraph 8 were the result of a good faith and appropriate process, provided CEOC with substantial benefits and with fair market value of the assets it sold (as attested by opinions of independent financial advisors), and provided billions of dollars that contributed to CEOC's ability to pay, since the beginning of 2013, more than \$3.6 billion to its creditors. (Sambur Decl. ¶ 6.)

10. Each transaction described in paragraph 8 was reviewed by independent and experienced financial advisors, and each transaction was accompanied by one or more independent opinions from financial advisors that CEOC was receiving fair value for the assets sold. (Sambur Decl. ¶ 6.)

11. The sale to CERP in October 2013 was specifically reviewed and approved by CEOC's Board of Directors, in consultation with legal counsel and an independent financial advisor. (Sambur Decl. ¶ 6.)

12. The sales of assets to CGP in October 2013 and May 2014 were undertaken by special committees made up of independent CEC directors assisted by their own legal and financial advisors, and each of these asset sales was approved by the CEOC Board via unanimous written consent. (Sambur Decl. ¶ 6.)

13. Together, the transactions described in paragraph 8 were designed to generate capital for CEOC to deleverage, ensure maintenance with debt covenants, and push out debt maturities, and the proceeds were used to pay creditors. (Sambur Decl. ¶ 6.)

14. Caesars Enterprise Services, LLC ("CES") was created to manage enterprise-wide intellectual property and other shared services among CGP, CEOC and CERP, including Total Rewards, an industry-leading customer loyalty program. (Sambur Decl. ¶ 7.)

15. The creation of CES was a condition attached by the CAC Special Committee to CGP's purchase from CEOC of four properties in May 2014. (Sambur Decl. ¶ 7.)

16. In connection with the creation of CES, CEOC licensed on a non-exclusive basis certain intellectual property related to Total Rewards to CES. (Sambur Decl. ¶ 7.)



### **The Issuance of the Notes**

17. The Prospectus filed with the SEC prior to the issuance of the 2016 Notes specifically disclosed that the Guarantee provided for in the Indenture could be released, including if CEOC ceased to be CEC's "wholly owned subsidiary." (Hurwitz Decl. Ex. A (Prospectus Supplement) at 8.)

18. It also explained that CEC "conduct[ed] substantially all of its business through [CEOC] and its subsidiaries and [did] not own any material assets other than the common stock of [CEOC]" and was therefore "dependent on the receipt of dividends or other payments from [CEOC] to make payments on the guarantee." (Hurwitz Decl. Ex. A (Prospectus Supplement) at 8.)

19. Additional provisions were added to the Indenture through the issuance of an Officer's Certificate on June 9, 2006. (Hurwitz Decl. Ex. I (Report on Form 8-K (June 14, 2006) at Ex. 4.2).)

### **The B-7 Transaction and 5% Stock Sale**

20. By the end of the first quarter of 2014, CEC guaranteed almost \$17.5 billion of CEOC's debt, including the 2016 Notes. At the time, however, CEC had only \$174.6 million in cash, cash equivalents, and short term investments, and its market capitalization was approximately \$2.6 billion. (Sambur Decl. ¶ 9.)

21. On May 6, 2014, CEC and CEOC announced a transaction (the "B-7 Transaction") designed to repay CEOC's near-term maturities. Under the B-7 Transaction, CEOC obtained \$1.75 billion of new term loans, which were used to repay, among other things, nearly all outstanding notes that were set to mature before 2016, including certain notes held by CGP. (Sambur Decl. ¶ 10.)

22. A principal purpose of the B-7 Transaction was to fund the repurchase of CEOC notes due in 2015. (Sambur Decl. ¶ 14.)

23. Specifically, CEOC retired: (a) 98 percent of the \$214.8 million in aggregate principal amount of 10.00% Second Priority Senior Secured Notes due 2015; and (b) 99.1 percent of the \$792 million in aggregate principal amount of 5.625% Senior Notes due 2015. (Sambur Decl. ¶ 10.)

24. In addition, as part of the B-7 Transaction, CEOC's bank lenders—operating at the time under a Second Amended and Restated Credit Agreement (the “Credit Agreement”)—consented to amend that agreement to relax certain financial covenants, including the “Senior Secured Leverage Ratio” (“SSLR”) maintenance covenant, which governed the amount of senior secured debt CEOC could carry relative to its EBITDA, and which CEOC had been at risk of breaching. (Sambur Decl. ¶ 11.)

25. As a condition of the new financing, the lenders who negotiated the transaction demanded that CEC exercise its right under various indentures—including the 2016 Notes Indenture—to release CEC's parent guarantee. This is reflected in, among other places, the Incremental Facility Amendment and Term B-7 Agreement itself, which provides in Section 4.1(b)(6) that “[p]rior to or substantially concurrently with the assumption of the Initial Term B-7 Loans by [CEOC], [CEOC] shall not be a Wholly-Owned Subsidiary of [CEC].” (Sambur Decl. ¶ 12 & Ex. A (Incremental Facility Amendment and Term B-7 Agreement) at 10.)

26. Because of the benefits to CEOC of obtaining the substantial new cash from the B-7 Transaction, CEC and CEOC assented to the lenders' conditions. (Sambur Decl. ¶ 12.)

27. Accordingly, on May 5, 2014, CEC sold 5% of CEOC's stock to three investors for a total of \$6.15 million (the “5% Stock Sale”). (Sambur Decl. ¶ 13.)

28. The purchasers in the 5% Stock Sale were unaffiliated investors that held equity in CEC or CEOC debt. The sale followed arm's-length negotiations over the price, with the transaction completed at a figure between the parties' initial positions. (Sambur Decl. ¶ 13; Hurwitz Decl. Ex. B (Dhingra Dep. Tr.) at 58:3-8; Ex. C (Wallach Dep. Tr.) at 30:8-31:7, 114:20-116:8; Ex. D (Roselli Dep. Tr.) at 26:22-24.)

29. One of the purchasers in the 5% Stock Sale made the investment largely because "there was a chance that [the stock] could be worth a lot." (Hurwitz Decl. Ex. C (Wallach Dep. Tr.) at 61:4-20, 154:6-18.)

30. Another purchaser in the 5% Stock Sale purchased the shares based on CEOC's attractive financial characteristics and the potential positive return. (Hurwitz. Decl. Ex. D (Roselli Dep. Tr.) at 69:4-13, 70:25-71:18.)

31. The sale did not entail any modifications to the Indenture, and no consent by the holders of the Notes was required under the terms of the Indenture. (Sambur Decl. ¶ 13.)

32. As a consequence of the sale, CEOC was no longer a "wholly owned subsidiary" of CEC. (Sambur Decl. ¶ 13.)

33. Among the purchasers of CEOC stock in the 5% Stock Sale was one investor that separately agreed to sell other CEOC notes (due to mature in 2015) back to the company, conditioned on the closing of the B-7 Transaction and at approximately the same time as the 5% Stock Sale. The price at which this sale was completed was equivalent to the price offered to all other holders of those notes in a tender offer made later that year. (Sambur Decl. ¶ 14.)

34. As a matter of standard practice for a transaction such as the 5% Stock Sale, the purchasers in the transaction were indemnified for any potential related litigation. (Hurwitz Decl. Ex. B (Dhingra Dep. Tr.) at 116:8-15; Ex. C (Wallach Dep. Tr.) at 75:16-76:19, 78:5-18.)

### **6% Stock Transfer**

35. Separately, on May 30, 2014, CEOC executed a transaction (the “6% Stock Transfer”) in which it transferred approximately 6% of its stock to an employee benefit plan for distribution to 377 employees, causing CEC to thereafter own approximately 89% of CEOC. (Sambur Decl. ¶ 15.)

36. The 6% Stock Transfer provided incentive compensation to employees and also allowed CEOC to disperse ownership of its stock and thus facilitated the listing of CEOC stock on an exchange, with the potential to create a liquid and tradable equity currency for CEOC to enable future capital markets transactions and debt-for-equity exchanges. (Sambur Decl. ¶ 15.)

37. As with the 5% Stock Sale, the 6% Stock Transfer did not modify the Indenture, and the Indenture required no consent by the holders of the Notes. (Sambur Decl. ¶ 16.)

### **August Transaction**

38. On August 12, 2014, CEOC, CEC, and certain noteholders (the “Participating Noteholders”) representing a majority of the 2016 Notes and CEOC’s 5.75% Senior Notes due 2017 entered into a Note Purchase and Support Agreement. The transaction (the “August Transaction”) was completed on August 22, 2014. (Sambur Decl. ¶ 17.)

39. Under the August Transaction, the Participating Noteholders consented to amendments to the indentures governing the 2016 and 2017 Notes by, among other things,

removing CEC's guarantee on the 2016 and 2017 Notes and transferred to CEC and CEOC approximately \$89.4 million of the 2016 Notes and \$66 million of the 2017 Notes. (Sambur Decl. ¶ 17.)

40. As part of the August Transaction, CEC and CEOC each transferred \$77.7 million in cash to the Participating Noteholders, and CEOC paid the Participating Noteholders for accrued and unpaid interest. CEC additionally transferred \$426.6 million of the 2016 and 2017 Notes that it held to CEOC for cancellation. (Sambur Decl. ¶ 17.)

41. In total, the August Transaction reduced CEOC's outstanding debt by \$582 million, at a cost to CEOC of only \$78 million. (Sambur Decl. ¶ 17.)

42. CEC's guarantee on the 2016 and 2017 Notes had already been released as of May 2014, and the August Transaction, among other things, served to reinforce that those guarantees were no longer in effect. (Hurwitz Decl. Ex. E (Sambur Dep. Tr.) at 324:14-325:7, 419:5-21.)

#### **The Relationship Between CEC and CEOC Following the May Transactions**

43. Prior to June 2014, CEOC's Board of Directors consisted of two members, but on June 27, 2014, one of them resigned and six new Board members were appointed, including two independent directors. In early July 2014, the independent directors of CEOC's Board selected independent legal counsel. (Sambur Decl. ¶ 18.)

44. On July 30, 2014, a Governance Committee was formed on CEOC's Board, with the two independent directors as its only members. (Sambur Decl. ¶ 19.)

45. The Governance Committee was granted the power to evaluate any material financial transactions involving CEOC or its assets that required Board approval, and to exercise sole authority to consider and approve any matter involving a material conflict of interest

affecting any other director or any person or group owning more than 5% of the company—including CEC. (Sambur Decl. ¶ 19.)

46. The Governance Committee also began an investigation into whether CEOC and other affiliates had legal claims against CEC based on various transactions, with the assistance of CEOC's independent legal counsel and an independent financial advisor. (Sambur Decl. ¶ 19.)

47. The independent directors, together with the members of the CEOC Board, expressly approved the August Transaction. (Sambur Decl. ¶ 20.)

### **The Restructuring Support Agreement**

48. Over 2014, CEC and CEOC took action to enhance CEOC's overall financial condition and reposition CEOC for an improved gaming market. (Sambur Decl. ¶ 21.)

49. As a result of the transactions and efforts discussed above, CEOC increased its cash reserves and decreased its debts. (Sambur Decl. ¶ 21.)

50. The 5% Stock Sale, the 6% Stock Transfer, and the August Transaction helped to provide substantial benefits to CEOC—including more than \$2 billion in cash and debt relief—and were undertaken as part of a broader, sustained effort over many years to improve CEOC's financial condition, and provided CEOC with the means to pay more than \$1.7 billion to its creditors. (Sambur Decl. ¶ 8.)

51. CEOC had approximately \$1.2 billion in liquidity at the end of the first quarter of 2014 and \$2.2 billion at the end of the second quarter. CEOC and CEC were paying all of their debts when due and were in compliance with their debt covenants, and CEC had an unqualified opinion from its auditors on its consolidated financial statements, which included CEOC. (Sambur Decl. ¶ 21.)

52. On September 12, 2014, CEC announced that CEC and CEOC had executed non-disclosure agreements with certain senior creditors of CEOC. (Sambur Decl. ¶ 22.)

53. CEC had earlier attempted to engage creditor groups that included holders of CEOC's second lien debt, but discussions ultimately did not progress or result in them joining the Restructuring Support and Forbearance Agreement (the "RSA") described below. (Sambur Decl. ¶ 22.)

54. The negotiations with CEOC's senior secured creditors ultimately led to the RSA, originally dated December 19, 2014, which formed the basis of a plan for reorganization in CEOC's Chapter 11 case. The RSA sets forth the economic terms of a proposed plan for the reorganization of CEOC and the other debtor-affiliates. (Sambur Decl. ¶ 23.)

55. Negotiations among representatives of CEC, the debtors, and CEOC's creditors are ongoing, and it is entirely possible that another plan will be developed and presented to the Bankruptcy Court, with different levels of distributions to CEOC's creditors based on, among other things, different contributions by CEC. (Sambur Decl. ¶ 24.)

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PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By:           /s/ Lewis R. Clayton          

Lewis R. Clayton  
Michael E. Gertzman  
Jonathan H. Hurwitz  
Ankush Khardori  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000  
lclayton@paulweiss.com

FRIEDMAN KAPLAN SEILER & ADELMAN LLP

Eric Seiler  
Philippe Adler  
Jason C. Rubinstein  
7 Times Square  
New York, New York 10036-6516  
(212) 833-1100

*Attorneys for Caesars Entertainment Corporation*