UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

CAESARS ENTERTAINMENT CORPORATION, *et al.*,

Defendants.

Case No. 14-cv-07091 (SAS)

LOCAL RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56.1 of the Local Civil Rules for the Southern and Eastern District of New York, and in support of their motion for partial summary judgment, 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 (collectively, Plaintiffs"), hereby set forth those material facts as to which there is no genuine dispute between the parties.

I. The Parties

1. Plaintiff MeehanCombs Global Credit Opportunities Master Fund, LP is the holder of $5,862,000.00 of 6.50% senior unsecured notes due 2016 (the "2016 Notes") issued by Caesars Entertainment Operating Company, Inc. ("CEOC"). Fourth Supplemental Verified Statement Pursuant to Bankruptcy Rule 2019, *In re Caesars Entertainment Operating Co., Inc.*, Case No. 15-01145 (ABG) (Bankr. N.D. Ill. 2015) ("CEOC Bankr."), Ex. A (CEOC Bankr., ECF No. 2381).

2. Plaintiff Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust is the holder of $4,432,000.00 of the 2016 Notes. *Id.*

3. Plaintiff Trilogy Portfolio Company, LLC and its affiliate hold and/or manage $9,400,000.00 of the 2016 Notes. *Id.*

4. Defendant Caesars Entertainment Corporation ("CEC"), formerly known as Harrah's Entertainment, Inc., is a Delaware corporation with its principal place of business at One Caesars Palace Drive in Las Vegas, Nevada. Answer, ¶ 27 (ECF No. 35).[1]

5. CEC is controlled by its private equity sponsors, Apollo Global Management, LLC ("Apollo") and TPG Capital, LP ("TPG"). CEC Form 10-Q (period ending June 30, 2015), at 33 (http://investor.caesars.com/secfiling.cfm?filingID=858339-15-146).

6. Affiliates of Apollo and TPG acquired a controlling interest in CEC's stock through a 2008 leveraged buyout transaction (the "2008 LBO"). Defendant Caesars Entertainment Corporation's Responses & Objections to Plaintiffs' First Set of Requests for Admissions ("CEC Admis.") Nos. 12, 13.

7. CEOC, formerly known as Harrah's Operating Company, Inc., is a direct operating subsidiary of CEC. Answer, ¶ 28 (ECF No. 35).

II. The Indenture

8. The 2016 Notes were sold pursuant to a registered public offering. Supplement to Prospectus Dated Apr. 6, 2006 (June 6, 2006) (http://www.sec.gov/Archives/edgar/data/858339/000110465906040050/a06-12774_1424b2.htm)

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[1] Unless otherwise indicated, citations to "ECF No. __" refer to documents filed electronically in *MeehanCombs Global Credit Opportunities Master Fund, LP v. Caesars Entertainment Corp., et al.*, Case No. 14-cv-07091 (SAS).

9. The 2016 Notes are governed by an indenture agreement, dated June 9, 2006 (the "Indenture"), by and among CEOC (as Issuer), CEC (as Guarantor), and U.S. Bank National Association (as Trustee). CEC Admis. No. 1.

10. CEOC issued a total of $750,000,000 in 2016 Notes pursuant to the Indenture. *Id.* at 2.

11. Pursuant to the terms of the Indenture, CEC guaranteed the payment of all principal and interest due on the 2016 Notes (the "Guarantee"). Ex. A to Pierce Decl. (Indenture), §§ 508, 1501(1), Exhibit A.

12. The Indenture, the Notes, and the Guarantee are all governed by the Trust Indenture Act of 1939, 15 U.S.C. §§ 77aaa, *et seq.* Amended Complaint, ¶¶ 2, 4 (ECF No. 31); Answer, ¶¶ 2, 4 (ECF No. 35).

13. The "Recitals" to the Indenture state:

> The Corporation and the Guarantor have duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of unsecured debentures, notes or other evidences of indebtedness (together with the related guarantees provided by the Guarantor, the "Securities"), to be issued in one or more series as provided for in this Indenture. All things necessary to make this Indenture a valid agreement of the Corporation and the Guarantor, in accordance with its terms, have been done.

Ex. A to Pierce Decl. (Indenture).[2]

14. Section 107 of the Indenture states:

> Conflict with the Trust Indenture Act.
>
> "If any provision hereof limits, qualifies, or conflicts with a provision of the Trust Indenture Act which is required under such provision of the Trust Indenture Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or

[2] Citations in this Statement to "Ex. __ to Pierce Decl." refer to exhibits attached to the Declaration of Clay J. Pierce in Support of Plaintiffs' Motion for Partial Summary Judgment.

> excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be."

Ex. A to Pierce Decl. (Indenture); CEC Admis. No. 5.

15. Section 203 of the Indenture states in part:

> Form of Reverse of Security
>
> No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

Ex. A to Pierce Decl. (Indenture).

16. Section 501 of the Indenture defines an "Event of Default" as, among other things, the following:

> (5) the Corporation or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:
>
> (a) commences a voluntary case,
>
> (b) consents to the entry of an order for relief against it in an involuntary case,
>
> (c) consents to the appointment of a Custodian of it or for all or substantially all of its property,
>
> (d) makes a general assignment for the benefit of its creditors, or
>
> (e) generally is not paying its debts as the same become due;

Id.

17. Section 502 of the Indenture states in part:

> If an Event of Default specified in Section 501 (5) or (6) shall occur, the principal amount (or specified amount) of and accrued and unpaid interest, if any, on all Outstanding Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

Id.

18. Section 507 of the Indenture states in part:

> Limitation on Suits
>
> No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless . . . it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Id.

19. Section 508 of the 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 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.

Ex. A to Pierce Decl. (Indenture); CEC Admis. No. 6.

20. Section 512 of the Indenture states:

> Control By Holders.
>
> The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series; provided that:
>
> > (1) such direction shall not be in conflict with any rule of law or with this Indenture,
> >
> > (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction,
> >
> > (3) such direction is not unduly prejudicial to the rights of other Holders of Securities of that series not joining in that action;

> (4) subject to the provisions of Section 501, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

Ex. A to Pierce Decl. (Indenture).

21. Section 801 of the Indenture states:

> Corporation May Consolidate, Etc., on Certain Terms.
>
> The Corporation shall not consolidate with or merge with or into any other Person or, directly or indirectly, sell, lease or convey all or substantially all of its assets to another Person, and may not permit any Person to, directly or indirectly, sell, lease or convey all or substantially all of its assets to the Corporation, whether in a single transaction or a series of related transactions, unless:
>
> > (1) either the Corporation shall be the continuing person, or the Person (if other than the Corporation) formed by such consolidation or into or with which the Corporation is merged or to which the assets of the Corporation are transferred shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Corporation on the Outstanding Securities and under this Indenture;
> >
> > (2) immediately after giving effect to such transaction, no Event of Default, and no event or condition which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and
> >
> > (3) the Corporation has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance or lease and such supplemental indenture comply with this Section 801 and that all conditions precedent herein provided for relating to such transaction have been complied with.

Id.

22. Section 901 of the Indenture states in part:

> Supplemental Indentures Without Consent of Holders

> Without the consent of any Holders, the Corporation, the Guarantor and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:
>
> (5) to change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such change or elimination (A) shall neither (i) apply to any Security entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision, or (B) add any new provision to this Indenture, provided that any such addition does not apply to any Security of any series created prior to the execution of such supplemental indenture or (C) shall become effective only when there is no such Security Outstanding; or
>
> (6) make any other change that does not adversely affect the rights of any Holder . . . .

Id.

23. Section 902 of the Indenture states in part:

> Supplemental Indentures With the Consent of Holders
>
> The Corporation, the Guarantor and the Trustee may enter into a supplemental indenture with the written consent of the Holders of at least a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange offer for the Securities of such series), for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of such series; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,
> (1) . . . impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) . . . .

Id.

24. Section 1501(1) of the Indenture states in part:

> Guarantee.
>
> Subject to Section 1501(2), below, the Guarantor hereby irrevocably and unconditionally guarantees (such guarantee being the "*Guarantee*") to each Holder of a Security of any series authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of

> the validity and enforceability of this Indenture and the Securities of any series hereunder, that: (i) the principal of, premium, if any, and interest on the Securities of such series promptly will be paid in full when due, whether at the Maturity, by acceleration . . . . The Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Securities of any series of this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of such Securities with respect to any provisions hereof or thereof, the recovery of any judgment against the Corporation, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Ex. A to Pierce Decl. (Indenture); CEC Admis. No. 7.

25. Section 1503 of the Indenture states in part:

> Release of Guarantor
>
> The Guarantor shall be released from all of its obligations under the Guarantee with respect to Securities of any series and under this Indenture if:
>
> * * *
>
> (3) the Corporation ceases for any reason to be a "wholly owned subsidiary" of the Guarantor (as such term is defined in Rule l-02(z) of the Regulation S-X promulgated by the SEC).
>
> Upon any assumption of the Guarantee by any Person pursuant to this Section 1503, such Person may exercise every right and power of the Guarantor under this Indenture with the same effect as if such successor corporation had been named as the Guarantor herein with respect to Securities of any series, and all the obligations of the Guarantor, hereunder and under the Guarantee and the Indenture shall terminate with respect to Securities of any series.

Ex. A to Pierce Decl. (Indenture).

26. The Form of Notation of Guarantee of Harrah's Entertainment, Inc., in Exhibit A to the Indenture, states in part:

> For value received, the undersigned, Harrah's Entertainment, Inc. (the "Guarantor") (which term includes any successor person under the Indenture), has unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture . . . (a) the due and

> punctual payment of the principal of, premium, if any, and interest on, the Securities, whether at maturity, [or] by acceleration . . . .

Ex. B to Pierce Decl. (Form of Notation).

27. Indenture agreements entered into by CEOC following the 2008 LBO did not incorporate Regulation S-X's definition of wholly owned subsidiary into their guarantee release provisions. Caesars Entertainment Corporation's Local Civil Rule 56.1 Response to BOKF, N.A.'s Statement of Material Facts ("CEC BOKF SUMF Admis.") No. 14, and Counter-Statement of Material Facts, ("CEC BOKF Counter Stmt."), filed in *BOKF, N.A. v. Caesars Entertainment Corporation*, No. 15-cv-01561 (SAS) (the "*BOKF* Action") (*BOKF* Action, ECF No. 39).[3]

28. Indenture agreements entered into by CEOC following the 2008 LBO did not provide that each holder's right to recover under the parent guarantee is "absolute and unconditional." CEC BOKF SUMF Admis. No. 6.

III. The August Transaction

29. On August 12, 2014, CEC and CEOC entered into a Note Purchase and Support Agreement (the "NPSA") with four funds (the "Majority Noteholders") that together held a majority of: (i) the 2016 Notes; and (ii) 5.75% senior unsecured notes issued by CEOC and guaranteed by CEC (the "2017 Notes") that (like the 2016 Notes) were issued prior to the 2008 LBO. Ex. F to Pierce Decl. (NPSA), Sched. B.

30. Pursuant to the NPSA, the Majority Noteholders, representing [redacted] aggregate principal amount of 2016 Notes and 2017 Notes, collectively, constituting greater than 51% of each class of the 2016 Notes and 2017 Notes that were held by non-affiliates of CEC and

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[3] The CEC BOKF SUMF Admis. (*BOKF* Action, ECF No. 39) was filed in response to BOKF, N.A.'s Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 in Support of its Motion for Partial Summary Judgment (*BOKF* Action, ECF No. 33), which contains the text of the statements to which CEC responded.

CEOC, agreed to sell to CEC and CEOC an aggregate principal amount of approximately [redacted] [redacted] of the 2016 Notes and an aggregate principal amount of approximately [redacted] of the 2017 Notes. *Id.*, § 7.4, Sched. A, Sched. B.

31. As part of the transaction set forth in the NPSA (the "August Transaction"), the Majority Noteholders consented to amendments to the indentures governing the 2016 Notes and the 2017 Notes, which among other things, removed CEC's guarantee on the 2016 and 2017 Notes and transferred to CEC and CEOC approximately $155.4 million of the 2016 and 2017 Notes. CEC BOKF Counter Stmt., ¶ 40 (*BOKF* Action, ECF No. 39).

32. In return, CEC and CEOC each transferred $77.7 million in cash to the Majority Noteholders (for a total amount of $155.4 million), and CEOC paid the Majority Noteholders for accrued and unpaid interest. CEC BOKF Counter Stmt., ¶ 41 (*BOKF* Action, ECF No. 39); Ex. F to Pierce Decl., (NPSA), § 2.2(b).

33. CEC, CEOC, and the Majority Noteholders were the only parties to the August Transaction. CEC Admis. Nos. 46, 48; Ex. H to Pierce Decl., August 17, 2015 Andrew Dietderich Deposition ("Dietderich Tr."), 43:11-16, 99:21-23.

34. Neither CEC nor CEOC offered the opportunity to participate in the August Transaction to all holders of the 2016 Notes outstanding at the time of the August Transaction. CEC Admis. Nos. 44, 45; Ex. H to Pierce Decl. (Dietderich Tr.), 63:8-64:10, 99:21-23.

35. CEC and CEOC did not obtain the consent of all holders of the 2016 Notes and the 2017 Notes to the terms of the August Transaction. CEC Admis. No. 47.

36. CEC paid the Majority Noteholders par plus unpaid and accrued interest. Ex. H to Pierce Decl. (Dietderich Tr.), 96:20-97:2.

37. As part of closing the August Transaction, CEC and CEOC [redacted] [redacted] [redacted] in connection with the August Transaction. CEC-Noteholder_00006099 – 00006109 [redacted].

38. Prior to the August Transaction, the 2016 Notes and 2017 Notes were the last series of notes on which the parent guarantee had yet to be discharged. Reply Brief in Support of Petition for Permission to Appeal Pursuant to 28 § U.S.C. 1292(b) and Federal Rule of Appellate Procedure 5 ("CEC Appellate Reply"), at 3, filed in *BOKF, N.A. v. Caesars Entertainment Corporation*, No. 15-2827-cv (2d Cir. 2015) ("*BOKF* Appeal") (*BOKF* Appeal, ECF No. 13); Declaration of David B. Sambur ("Sambur Decl.") ¶ 20, (*BOKF* Action, ECF No. 40); CEC's Sum. Judg. Op. at 13, (*BOKF* Action, ECF No. 44); CEC BOKF Counter Stmt., ¶ 44 (*BOKF* Action, ECF No. 39).

39. As part of the August Transaction, CEC and CEOC agreed with the Majority Noteholders to remove CEC's guarantee on the 2016 Notes. CEC Appellate Reply at 3 (*BOKF* Appeal, ECF No. 13); Sambur Decl., ¶ 18 (*BOKF* Action, ECF No. 40); CEC BOKF Counter Stmt., ¶ 40 (*BOKF* Action, ECF No. 39).

40. On August 22, 2014, CEOC issued an Officer's Certificate to the Trustee executed by Mary Higgins regarding satisfaction of the conditions precedent to the execution and delivery of the First Supplemental Indenture that resulted from the Majority Noteholders consent to amendments to the Indenture to remove the Guarantee. The Officer's Certificate contains no reference that the Guarantee was released in May or June 2014. CEC-Noteholder_00005928-00005932 (Aug. 22 6.50 % Officer's Cert.)

41. On August 22, 2014, CEOC issued an Officer's Certificates to the indenture trustees for other CEOC notes that reiterated that on June 2, 2014, CEOC had issued Officer's Certificates informing those indenture trustees of the release of CEC's guarantees as a result of the 5% Stock Sale (defined below) and CEOC's election under the terms of their indentures. Exhibits 39, 40 to August 27, 2015 Mary Higgins Deposition.

42. CEC first disclosed the August Transaction on August 12, 2014. CEC Admis. No. 42.

43. CEC first disclosed the consummation of the NPSA on August 22, 2014. CEC Admis. No. 43.

44. On August 25, 2014, CEOC and CEC filed an amendment to their Form 8-K announcing the consummation of the NPSA and attaching as exhibits certain amended indentures that purported to govern the 2016 Notes (the "Supplemental Indentures") as of that date. Amended Complaint, ¶ 8 (ECF No. 31); Answer, ¶ 8 (ECF No. 35).

45. The First Supplemental Indenture purported to remove the guarantees of the 2016 Notes. Ex. G to the Pierce Decl. (First Supp. Indent.)

46. The Majority Noteholders consented to the indenture amendments. Plaintiffs and other minority holders did not consent to the indenture amendments or to the Supplemental Indentures. *Id.*; First Supplemental Indenture for the 2016 Notes (http://www.sec.gov/Archives/edgar/data/858395/000119312514319290/d779174dex42.htm).

IV. Events Leading up to the August Transaction

A. The 5% Stock Sale

47. On May 5, 2014, CEC sold 68.1 shares of CEOC common stock (the "5% Stock Sale") to funds managed by Paulson & Co., Inc. ("Paulson"), Scoggin LLC ("Scoggin"), and Chatham Asset Management, LLC ("Chatham"). Chatham Stock Purchase Agreement

("Chatham SPA"), CEC-Noteholder_00000796 – 00000809; Paulson Stock Purchase Agreement ("Paulson SPA"), CEC-Noteholder_00007118 – 00007131, Scoggin Stock Purchase Agreement ("Scoggin SPA"), CEC-Noteholder_00000810 – 00000823 (collectively, the "Stock Purchase Agreements").

48. The share price for the 5% Stock Sale was $90,308. CEC received a total of $6,150,000 as a result of the 5% Stock Sale. Stock Purchase Agreements at 1.

49. At the time of the 5% Stock Sale, the face amount of CEOC's debt exceeded the book value of the assets on its balance sheet. CEC Admis. No. 35.

50. CEC entered into the 5% Stock Sale in an effort to, among other things, release its guarantee of CEOC's bonds. CEC Admis. No. 34.

51. Prior to the 5% Stock Sale, CEC engaged a restructuring advisor, Blackstone Advisory Partners, L.P. ("Blackstone"). Blackstone advised CEC concerning the 5% Stock Sale. CEC BOKF SUMF Admis. No. 29; CEC-Noteholder_00033081 – 00033090 (Blackstone Engagement Letter); CEC-Noteholder_00004129 – 00004139 (the "[REDACTED]").

52. In the [REDACTED], which was dated [REDACTED], delivered to CEC's Board of Directors, Blackstone advised CEC [REDACTED]

53. In the [REDACTED], Blackstone also advised CEC's Board of Directors that, [REDACTED]

54. Prior to the 5% Stock Sale, Scoggin [redacted]. At the time of the 5% Stock Sale, Scoggin's [redacted]. Ex. J to Pierce Decl., September 29, 2015 Gautam Dhingra Deposition ("Dhingra Tr."), 47:6-12.

55. In connection with the 5% Stock Sale, Scoggin paid CEC [redacted] shares of CEOC common stock, [redacted]. Scoggin SPA at 1.

56. Since [redacted], Paulson [redacted] At the time of the 5% Stock Sale, Paulson's [redacted]. Ex. I to Pierce Decl. (Wallach Tr.), 44:21-45:9, 146:12-20.

57. Paulson paid CEC [redacted] for [redacted] shares of [redacted] common stock, [redacted] [redacted]. Paulson SPA at 1.

58. Paulson and Scoggin participated in the 5% Stock Sale, at least in part, [redacted] [redacted]. Ex. I to Pierce Decl. (Wallach Tr.), 65:22-66:20; Ex. J to Pierce Decl. (Dhingra Tr.), 47:4-9, 52:19-24.

59. Prior to the 5% Stock Sale, Chatham [redacted] [redacted]. Ex. C to Pierce Decl., Note Purchase Agreement between CEOC and Chatham, dated May 5, 2014 ("Chatham NPA"), Sched. A.

60. Chatham paid CEC [redacted] for [redacted] shares of CEOC common stock. Chatham SPA at 1.

61. The Stock Purchase Agreements contained no representations or warranties in favor of the 5% Stock Sale purchasers respecting CEOC's business, assets, financial condition, or prospects, other than a capitalization representation and a representation and warranty that the

subsidiaries of CEC (which would include CEOC) had filed or furnished the SEC with all required reports and documents. Chatham SPA, Article III; Paulson SPA, Article III; Scoggin SPA, Article III.

62. CEC agreed to indemnify each of Paulson, Scoggin, and Chatham for any claims asserted in connection with the 5% Stock Sale. Chatham SPA, § 7.10; Paulson SPA, § 7.10; Scoggin SPA, § 7.10.

B. The Chatham and CGP Note Purchase Agreements

63. On the same day as the 5% Stock Sale (May 5, 2014), CEOC entered into a "Note Purchase Agreement" with Chatham (the "Chatham NPA"). CEC Admis. No. 32; Ex. C to Pierce Decl., at 1.

64. Under the Chatham NPA, Chatham received [REDACTED] in exchange for selling back to CEOC [REDACTED]. Ex. C to Pierce Decl. (Chatham NPA), Schedule A; Ex. K to Pierce Decl., September 30, 2015 Greg Roselli Deposition ("Roselli Tr."), 177:10-178:2, 232:14-233:2.

65. Negotiations regarding both the Chatham NPA and/or the Chatham SPA occurred prior to May 5, 2104, the date each of the agreements was executed. CEC Admis. No. 33; Ex. C to Pierce Decl. (Chatham NPA); Chatham SPA.

66. On July 25, 2014, CEOC entered into an "Amended & Restated Note Purchase Agreement" with Chatham. Ex. E to Pierce Decl., Amended & Restated Note Purchase Agreement.

67. CEC's July 29, 2014, Form 8-K, disclosed that "pursuant to the previously announced note purchase agreements with a significant third-party holder [(Chatham)] and a subsidiary of Caesars Growth Partners, LLC (the 'CGP Holder' and, together with third party holder, the Selling Holders'), CEOC purchased (the 'Note Purchases') from the Selling Holders

approximately $740.5 million in aggregate principal amount of the 5.625% Senior Notes due 2015 for a price of $1,048.75 per $1,000 principal amount and approximately $106.6 million in aggregate principal amount (including the 10.00% Second-Priority Senior Secured Notes purchased through a mandatory redemption) of the 10.00% Second-Priority Senior Secured Notes due 2015 for a purchase price of $1,022.50 per $1,000 principal amount, in each case, plus accrued and unpaid interest to, but not including, the closing date." CEC Admis. No. 67, 68.

68. Under a note purchase agreement dated May 5, 2014, by and among, CEOC, Caesars Growth Partners, LLC ("CGP"), and Caesars Growth Bonds, LLC, CGP sold notes to CEOC in exchange for a total purchase price of $448,150,801.25 plus accrued interest. CEC Admis. No. 69; CEC BOKF SUMF Admis. No. 54 (*BOKF* Action, ECF No. 39).

C. The PIP

69. On May 30, 2014, CEC authorized the CEOC Board of Directors to adopt the performance incentive plan (the "PIP"). The CEOC Board of Directors adopted the PIP on the same date. CEC BOKF SUMF Admis. No. 56 (*BOKF* Action, ECF No. 39).

70. Pursuant to the PIP, CEOC granted 86,936 shares of its common stock to various individuals, including directors and officers of CEOC. The shares amounted to approximately 6% of the total outstanding CEOC common stock. CEC Admis. No. 72; CEC BOKF SUMF Admis. No. 57 (*BOKF* Action, ECF No. 39).

71. The PIP was announced by CEC on June 27, 2014. CEC Admis. No. 73; CEC BOKF SUMF Admis. No. 58 (*BOKF* Action, ECF No. 39).

72. Following the PIP, CEC reiterated in public filings that its Guarantee obligations for CEOC's bonds had been terminated. Caesars Entertainment Corporation Form 8-K (June 27, 2014) (http://investor.caesars.com/secfiling.cfm?filingid=1193125-14-253424&cik=858339) ("CEC 8-K 6/27/14")

73. At the time of the PIP, the face amount of CEOC's debt exceeded the book value of the assets on its balance sheet. CEC Admis. No. 37.

74. CEOC made payment (the "Gross-Up Payment") to each participant in the PIP in an amount such that, after payment by the participant of all federal, national, state, provincial and local income and employment taxes imposed under U.S. law (including any interest or penalties imposed with respect to such taxes), the participant retained an amount equal to the income taxes imposed upon the grant of the CEOC shares awarded through the PIP and the Gross-Up Payment. CEC Admis. No. 38.

75. The PIP was completed, at least in part, because CEC viewed it as sufficient to release its guarantees of CEOC bonds. CEC Admis. No. 36.

76. [redacted]

D. Negotiations Regarding the August Transaction

77. Immediately after the 5% Stock Sale, CEC issued a press release stating that CEC's guarantee obligations had been terminated because CEOC was no longer a wholly owned subsidiary of CEC. May 6, 2014 Comprehensive Financing Plan (http://investor.caesars.com/releasedetail.cfm?releaseid=845827)

78. On May 15, 2014, CEC received a letter sent by S&C on behalf of the Majority Noteholders (the "May 15 Letter"). CEC Admis. No. 39; Ex. H to Pierce Decl. (Dietderich Tr.), 30:23-31:4; Ex. D to Pierce Decl. (May 15 Letter).

79. In the May 15 Letter, the Majority Noteholders disputed CEC's statement in its May 6, 2014 Form 8K that the Unsecured Notes Guarantees were released as a result of the 5% Stock Sale. CEC Admis. No. 40.

80. In the May 15 Letter, the Majority Noteholders stated that CEC's Guarantee for the 2016 Notes and the 2017 Notes were irrevocable and remained in full force and effect as of the date of such letter. CEC Admis. No. 41.

81. During the period from May 15, 2014 to August 12, 2014, CEC and S&C, on behalf of the Majority Noteholders, negotiated the terms that were ultimately incorporated into the NPSA respecting the August Transaction. Ex. H to Pierce Decl. (Dietderich Tr.), 245:10-12.

82. CEC required that only 51% of the 2016 Noteholders participate in the August Transaction. *Id.* at 43:11-16.

83. S&C and the Majority Noteholders agreed to go forward with the August Transaction because, in part, they were being indemnified by CEC. Ex. H to Pierce Decl. (Dietderich Tr.), 76:20-77:5; Ex. F to Pierce Decl. (NPSA), § 9.1.

84. Shortly before the NPSA was executed, U.S. Bank, N.A. resigned as indenture trustee for the 2016 Notes. Answer, ¶ 34 (ECF No. 35).

85. On or about July 31, 2014, Law Debenture Trust Company of New York became successor indenture trustee for the 2016 Notes. Answer, ¶ 34 (ECF No. 35).

V. The Caesars Enterprise

86. CEC and CEOC, through their affiliates, own, operate, or manage approximately 50 casinos in 14 U.S. states and five countries. CEC Admis. Nos. 47(a), 80; CEC BOKF SUMF Admis. No. 2 (*BOKF* Action, ECF No. 39); CEC BOKF Counter Stmt. ¶ 1 (*BOKF* Action, ECF No. 39).

87. On January 28, 2008, CEC was acquired by affiliates of Apollo and TPG in a $30.7 billion leveraged buyout transaction that included the assumption of $12.4 billion in debt and approximately $1.0 billion in acquisition costs. CEC Admis. No. 12.

88. Affiliates of Apollo and TPG contributed approximately $6.1 billion to the leveraged buyout transaction, and the remainder was funded through the issuance of approximately $24 billion in debt, approximately $19.7 billion of which was secured by liens on substantially all of CEOC's assets. CEC Admis. No. 13.

89. In Exhibit 99.1 to CEC's August 9, 2013 10-Q, it disclosed that:

> In January 2008, Caesars Entertainment Corporation ("Caesars Entertainment" or "Caesars") was acquired by affiliates of Apollo Global Management, LLC and TPG Capital, LP in an all-cash transaction (the "Acquisition"). A substantial portion of the financing of the Acquisition is comprised of bank and bond financing obtained by Caesars Entertainment Operating Company, Inc. (for purposes of this Exhibit, "CEOC", the "Company," "we," "our," or "us," and including our subsidiaries when the context requires), a wholly-owned subsidiary of Caesars Entertainment. This financing is neither secured nor guaranteed by Caesars Entertainment's other wholly-owned subsidiaries, including certain subsidiaries that own properties that are secured under $4,439.1 million face value of commercial mortgage-backed securities ("CMBS") financing. Therefore, we believe it is meaningful to provide information pertaining solely to the consolidated financial position and results of operations of CEOC and its subsidiaries.

CEC Admis. Nos. 19, 20.

90. In CEC's May 13, 2009 10-Q, it disclosed that:

> The Merger was completed on January 28, 2008, and was financed by a combination of borrowings under the Company's new term loan facility due 2015, the issuance of Senior Notes due 2016 and Senior Toggle Notes due 2018, certain real estate term loans and equity investments of Apollo/TPG, co-investors and members of management.

CEC Admis. Nos. 17, 18.

91. In CEC's March 16, 2009 10-K, it disclosed that:

> We are a highly leveraged company. As of December 31, 2008, we had $24.5 billion face value of outstanding indebtedness, and for the twelve months ended December 31, 2008, pro forma cash interest expense of $1.7 billion, adjusted to reflect the Merger as if it had occurred on January 1, 2008.

CEC Admis. Nos. 15, 16.

92. CEC's 2014 Annual Report disclosed that Hamlet Holdings LLC, the members of which were compromised of individuals affiliated with Apollo and TPG, beneficially owned approximately 61% of CEC stock pursuant to an irrevocable proxy providing Hamlet Holdings LLC with sole voting and sole dispositive power over those shares, and that, as a result, Apollo and TPG had the power to elect all of CEC's directors. CEC Admis. Nos. 50, 51; CEC BOKF SUMF Admis. No. 23 (*BOKF* Action, ECF No. 39).

93. Caesars Acquisition Company ("CAC"), a public company, was incorporated on February 25, 2013. CEC Admis. No. 59; CEC BOKF SUMF Admis. No. 32 (*BOKF* Action, ECF No. 39).

94. In October 2013, CEC formed Caesars Entertainment Resort Properties, LLC ("CERP"). CEC Admis. No. 58; CEC BOKF SUMF Admis. No. 31 (*BOKF* Action, ECF No. 39).

95. CGP was formed in October 2013 as a direct subsidiary of CAC for the purpose of acquiring certain businesses and assets of Caesars, among other things. CEC Admis. No. 60; CEC BOKF SUMF Admis. No. 33 (*BOKF* Action, ECF No. 39).

96. CEC obtained approximately 58% ownership interest and no voting interest in CGP, and CAC obtained approximately 42% ownership interest and 100% of the voting rights. CEC Admis. No. 61; CEC BOKF SUMF Admis. No. 34 (*BOKF* Action, ECF No. 39).

97. As of December 31, 2013, affiliates of Apollo and TPG owned or controlled approximately 64% of CEC's common stock, had the power to elect all of the company's board of directors, and had voting control of the company. CEC Admis. No. 14; CEC BOKF SUMF Admis. No. 20 (*BOKF* Action, ECF No. 39).

98. CEC's 2014 Annual Report disclosed that "during the quarter ended December 31, 2014, the Company continued its efforts to design and implement effective controls throughout the organization to respond to recent changes in our corporate entity, including (i) the formation and capitalization of CGP [] in the fourth quarter of 2013; and (ii) the formation of separate management and internal control structures for CEOC, CERP, and CES, in the third and fourth quarters of 2014." CEC further stated, in part, that "[t]hese activities which were initially commenced in the third quarter of 2014, included enhancements to the risk assessment process, changes to the design and implementation of existing controls and the design and implementation of new controls for non-gaming related corporate level processes for CEC, CEOC, CERP, CES, and CGP []." CEC Admis. No. 66; CEC BOKF SUMF Admis. No. 41 (*BOKF* Action, ECF No. 39).

99. As a result of CEC's and CEOC's out-of-court transactions, certain assets owned and operated by CEOC before 2011 are now owned by CERP, CAC, CGP, CES, and Caesars Interactive Entertainment Inc. or their subsidiaries. CEC BOKF SUMF Admis. No. 39 (*BOKF* Action, ECF No. 39).

VI. CEC's Continuing Control Over CEOC

100. Prior to the 5% Stock Sale, CEC owned 100% of CEOC's equity. Following the 5% Stock Sale and the PIP, CEC owned 89.3% of CEOC's equity. CEC Admis. No. 56; Ch. 11 Petition, at 26 (CEOC Bankr., EFC No. 1).

101. Prior to the PIP, CEC had the sole power to elect all directors of CEOC. CEC 8-K 6/27/14; Amended and Restated Cert. of Incorporation for CEOC (http://www.sec.gov/Archives/edgar/data/858339/000119312514185140/d721045dex31.htm) ("CEOC Cert. of Inc."), Art. VIII; Bylaws of CEOC (http://investor.caesars.com/corporate-governance-document.cfm?DocumentID=14608) ("CEOC Bylaws"), Art. II, § 5.

102. Following the 5% Stock Sale and the PIP, CEC continues to have the sole power to elect all directors of CEOC. CEC 8-K 6/27/14; CEOC Cert. of Inc., Art. VIII; CEOC Bylaws, Art. II, § 5.

103. Following the 5% Stock Sale and the PIP, CEC selected each member of CEOC's board of directors. CEC 8-K 6/27/14.

104. All the current members of CEOC's board were selected by CEC. CEC 8-K 6/27/14.

105. Following the 5% Stock Sale and the PIP, CEC continues to have the sole power to cause CEOC to sell its assets. CEOC Cert. of Inc., Art. VIII; CEOC Bylaws, Art. II, § 5.

106. Following the 5% Stock Sale and the PIP, CEC continues to have the sole power to take stockholder action, without a meeting, without prior notice, and without a vote, by written consent in lieu of meeting as the party that controls the majority interest in CEOC. CEOC Cert. of Inc., Arts. VI & VIII; CEOC Bylaws, Art. II, § 5.

107. CEC had and continues to have the sole power to ratify any action by CEOC, with the same effect "as though ratified by every stockholder of the Corporation." CEOC Cert. of Inc., § 10.2.

108. The 5% Stock Sale purchasers do not have the right to, designate any of the members of CEOC's board of directors. CEOC Cert. of Inc., Art. VIII; Ex. K to Pierce Decl. (Roselli Tr.), 374:5-7.

109. The 5% Stock Sale purchasers do not have any veto or approval rights over extraordinary actions, such as asset sales, mergers, acquisitions, charter amendments, securities offerings, stock repurchases, or incurrence of debt. CEOC Cert. of Inc., Arts. VI & VIII; CEOC Bylaws; Ex. J to Pierce Decl. (Dhingra Tr.), 268:24-269:3.

110. Since the completion of the 5% Stock Sale, [REDACTED]

[REDACTED]. Ex. I to Pierce Decl. (Wallach Tr.), 147:13-148:3; Ex. J to Pierce Decl. (Dhingra Tr.), 267:22-268:5, 268:16-18; Ex. K to Pierce Decl. (Roselli Tr.), 300:18-301:2.

111. [REDACTED]

[REDACTED] Ex. I to Pierce Decl. (Wallach Tr.), 162:24-163:4; Ex. K to Pierce Decl. (Roselli Tr.), 301:3-6.

112. The 5% Stock Sale purchasers do not have the right to call a special meeting of the shareholders of CEOC. CEOC Cert. of Inc., § 6.2; CEOC Bylaws, Art. 2, § 3.

113. The employees that hold CEOC common stock transferred as part of the PIP do not have the right to, and in fact did not, designate any of the members of CEOC's board of directors. CEOC Cert. of Inc., Art. VIII.

114. The employees that hold CEOC common stock transferred as part of the PIP do not have any veto or approval rights over extraordinary actions, such as asset sales, mergers, acquisitions, charter amendments, securities offerings, stock repurchases, or incurrence of debt. CEOC Cert. of Inc., Arts. VI & VIII; CEOC Bylaws, Art. II.

115. The employees that hold CEOC common stock transferred as part of the PIP do not have the right to call a special meeting of the shareholders of CEOC. CEOC Cert. of Inc., § 6.2; CEOC Bylaws, Art. 2, § 3.

VI. CEOC's Bankruptcy

116. In its 2013 Annual Report, CEC disclosed that "[w]e do not expect that cash flow from operations will be sufficient to repay CEOC's indebtedness in the long-term and we will have to ultimately seek a restructuring, amendment or refinancing of our debt, or if necessary,

pursue additional debt or equity offerings." CEC Admis. Nos. 48(a), 49; CEC BOKF SUMF Admis. No. 22 (*BOKF* Action, ECF No. 39).

117. CEOC's 2014 EBITDA was estimated to be less than $1 billion compared with more than $18 billion in debt owed by CEOC at that time. CEC Admis. No. 57; Memorandum in Support of Chapter 11 Petitions ("First Day Memo."), at 7 (CEOC Bankr., ECF No. 4); CEC BOKF SUMF Admis. No. 25 (*BOKF* Action, ECF No. 39).

118. In CEOC's Form 10-Q (period ending September 30, 2014), CEOC disclosed "that absent a refinancing, amendment, private restructuring or a reorganization under Chapter 11 of the Bankruptcy Code, based on our current operating forecasts and their underlying assumptions, we will require additional sources of liquidity to fund our operations and obligations beginning during the fourth quarter of 2015. These factors raise substantial doubt as to our ability to continue as a going concern beyond the fourth quarter of 2015." CEOC's Form 10-Q (period ending September 30, 2014), at 65 (http://investor.caesars.com/secfiling.cfm?filingid=858395-14-24&cik=858395Z).

119. On January 15, 2015, CEOC filed a petition with the United States Bankruptcy Court for the Northern District of Illinois under chapter 11 of Title 11 of the United States Code. CEC Admis. No. 75.

120. As of the date of filing of the CEOC bankruptcy, CEOC had outstanding funded debt obligations of approximately $18.4 billion comprising:

- four tranches of first lien bank debt totaling approximately $5.35 billion notional principal amount;
- three series of outstanding first lien notes totaling approximately $6.35 billion notional principal amount;
- three series of outstanding second lien notes totaling approximately $5.24 billion notional principal amount;

- one series of subsidiary-guaranteed unsecured debt of approximately $479 million notional principal amount; and
- two series of senior unsecured notes totaling approximately $530 million.

CEC Admis. No. 78; First Day Memo. at 4 (CEOC Bankr., ECF No. 4).

121. CEOC's filing of a petition under chapter 11 of Title 11 of the United States Code is an event of default under the Indenture. CEC Admis. No. 76; Ex. A to Pierce Decl., (Indenture), § 501.

122. Under CEOC's current-proposed plan, non-first lien creditors that accept the plan are expected to receive an 18% recovery, while non-first lien creditors that reject the plan are expected to receive a 5% recovery. Amended Discl. Stmt. at 8 (CEOC Bankr., ECF No. 2403).

Dated: October 23, 2015
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