

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)

PLAINTIFFS’ (A) RESPONSE TO CAESARS ENTERTAINMENT CORPORATION’S COUNTER-STATEMENT OF MATERIAL FACTS AND (B) OBJECTIONS TO PROFFERED EXPERT DECLARATION OF JAMES GADSDEN

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”), by and through their undersigned counsel, respectfully submit: (a) their response to the specific numbered paragraphs of the CEC Counter-Statement of Material Facts (ECF No. 79)¹ (“CEC Counter-Statement”) of Defendant Caesar Entertainment Corporation (“CEC”); and (b) their objections to the proffered expert declaration of James Gadsden (ECF No. 78) in support of CEC’s opposition to Plaintiffs’ motion for partial summary judgment (ECF Nos. 67 & 70). These responses are submitted solely for the purposes of Plaintiffs’ motion for partial summary judgment. Nothing herein shall be deemed an admission of the truth, materiality, relevance or admissibility of any CEC statement or declaration at trial or for any other purpose.

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).

A. Response to CEC's Counter-Statement of Material Facts.

(i) General Responses and Objections. In addition to the specific responses to the CEC Counter-Statement, Plaintiffs generally respond as follows:

First, the vast majority of the facts alleged in the CEC Counter-Statement are not relevant to Plaintiffs' motion for summary judgment. These non-relevant facts include, *inter alia*, the creation of a new entity to manage various interests of CEC and Caesars Entertainment Operating Company, Inc. (CEC Counter-Statement ¶¶ 14 - 16), purported lender requested financing terms (CEC Counter-Statement ¶¶ 24 - 25), and the negotiations surrounding the Chapter 11 restructuring agreement (CEC Counter-Statement, ¶¶ 52 - 55). For the reasons set forth in Plaintiffs' Reply Memorandum of Law, the Court can grant summary judgment regardless of any dispute regarding these alleged facts.

Second, CEC failed to support the allegations in the CEC Counter-Statement with citations to admissible evidence. Local Civil Rule 56.1(d) requires that "[e]ach statement by the movant or opponent pursuant to Rule 56.1(a) and (b), including each statement controverting any statement of material fact, must be followed by citation to evidence which would be admissible, set forth as required by Fed. R. Civ. P. 56(c)." Here, 48 of 55 of the CEC Counter-Statements are based solely on the Declaration of David B. Sambur in Support of CEC's Opposition to Plaintiffs' Motions for Partial Summary Judgment ("Sambur Decl.") (ECF No. 77). Fed. R. Civ. Proc. 56(c)(4) requires that "[a]n affidavit or declaration used to support or oppose a motion [for summary judgment] must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Here, Mr. Sambur's Declaration is not based on "personal knowledge," but rather "personal knowledge and business records." Sambur Decl., ¶ 2. The Declaration does not indicate which

of the statements included therein are based on Mr. Sambur's personal knowledge or some other (unspecified) source of information given that the Declaration contains no citations to admissible evidence from the record. Nor does the Declaration specify the "business records" relied on by Mr. Sambur.² Notably, when testifying as CEC's Rule 30(b)(6) witness, Mr. Sambur answered "I don't know" or variations thereon approximately three-hundred fifty (350) times during his 2-day deposition.

This Court has broad discretion to disregard any statements contained in the Sambur Declaration or the CEC Counter-Statement that the Court finds to be improper under the Federal Rules of Civil Procedure. *See Primmer v. CBS Studios*, 667 F.Supp.2d 248, 255 (S.D.N.Y. 2009). Because Mr. Sambur fails to establish any foundation for his competence to testify regarding the facts set forth in his Declaration—thereby violating both Fed. R. Civ. Proc. 56(c) and Local Rule 56.1(b)—Plaintiffs respectfully submit that the Court should disregard the Sambur Declaration.

The foregoing general responses and objections are fully incorporated by reference into each of the specific responses set forth below. Any specific response to a CEC Counter-Statement is not a waiver, in whole or in part, of any of the foregoing general responses and objections.

(ii) Specific Responses to each CEC Counter-Statement. In addition to Plaintiffs' general responses and objections stated above, Plaintiffs specifically respond to each CEC Counter-Statement as follows:

1. Admitted.
2. Admitted.

² The Sambur Declaration attaches a single business record: the Incremental Facility Amendment and Term B-7 Agreement (Sambur Decl., ¶ 25).

3. Admitted, except denied to the extent that, as of November 1, 2015, CEC had 144,908,313 outstanding shares trading at \$7.94 per share, resulting in a market capitalization of approximately \$1.15 billion. (Form 10-Q (period ended September 30, 2015), available at <http://investor.caesars.com/secfiling.cfm?filingID=858339-15-164&CIK=858339>)

4. Admitted.

5. Denied. Caesars Entertainment Operating Company, Inc.'s ("CEOC") poor financial condition and resulting bankruptcy was caused, in part, [REDACTED] (Gary Loveman October 13, 2015 Deposition Transcript, 66:3-11)

6. Denied. The Special Governance Committee formed by CEOC conducted an investigation into potential claims CEOC and/or its creditors may have against CEC arising from the capital market transactions and determined that it would require a significant contribution from CEC and its affiliates to settle and release certain claims, which indicates that CEC engaged in the capital market transactions to improve its own finances at CEOC's expense. (Memorandum in Support of Chapter 11 Petitions (Bankr. ECF No. 4) ("Chapter 11 Memo."), at 38-39, In re Caesars Entertainment Operating Co., Inc., *et al.*, Case No. 15-01145 (ABG) (Bankr. N.D. Ill. 2015))

7. Denied. The Special Governance Committee formed by CEOC conducted an investigation into potential claims CEOC and/or its creditors may have against CEC arising from the capital market transactions and determined that it would require a significant contribution from CEC and its affiliates to settle and release certain claims, which indicates that CEC engaged in the capital market transactions to improve its own finances at CEOC's expense. (*Id.*)

8. Admitted, except denied to the extent that CEC Counter-Statement No. 8 asserts that the terms of the referenced transactions are limited only to those set forth in the CEC Counter-Statement. (CEC Form 10-K (period ended December 31, 2013), available at investor.caesars.com/secfiling.cfm?filingid=858339-14-14&cik=858339); CEC Form 10-Q (period ended September 30, 2014), available at www.sec.gov/Archives/edgar/data/858395/000085839514000024/a2014q3ceocform10-q.htm.)

9. Denied. The Special Governance Committee formed by CEOC conducted an investigation into potential claims CEOC and/or its creditors may have against CEC arising from the capital market transactions and determined that it would require a significant contribution from CEC and its affiliates to settle and release certain claims, which indicates that CEC engaged in the capital market transactions to improve its own finances at CEOC's expense. (Chapter 11 Memo., at 38-39)

10. CEC Counter-Statement No. 10 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 10.

11. CEC Counter-Statement No. 11 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 11.

12. CEC Counter-Statement No. 12 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible

evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 12.

13. Denied. The Special Governance Committee formed by CEOC conducted an investigation into potential claims CEOC and/or its creditors may have against CEC arising from the capital market transactions and determined that it would require a significant contribution from CEC and its affiliates to settle and release certain claims, which indicates that CEC engaged in the capital market transactions to improve its own finances at CEOC's expense. (Chapter 11 Memo., at 38-39)

14. CEC Counter-Statement No. 14 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 14.

15. CEC Counter-Statement No. 15 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 15.

16. CEC Counter-Statement No. 16 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 16.

17. Admitted, except denied to the extent CEC Counter-Statement No. 17 asserts that the disclosures made in the Prospectus Supplement to Prospectus filed by Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc., dated April 6, 2006 (the "Prospectus

Supplement”), a non-governing document that purports to summarize the terms of the Indenture (*i.e.*, the governing document), states that the Indenture provides for the release of the guarantor Harrah’s Entertainment, Inc. in certain circumstances, including if “Harrah’s Operating ceases to be a wholly owned subsidiary of Harrah’s Entertainment.” (Hurwitz Decl. Ex. A (Prospectus Suppl.) at 8.)

18. Denied, except to admit that, to the extent the word “It” in CEC Counter-Statement No. 18 refers to the Prospectus Supplement, the Prospectus Supplement, a non-governing document that purports to summarize the terms of the Indenture (*i.e.*, the governing document), states that “Harrah’s Entertainment conducts substantially all of its business through Harrah’s Operating and its subsidiaries and does not own any material assets other than the common stock of Harrah’s Operating” and, [a]s such, Harrah’s Entertainment is dependent on the receipt of dividends or other payments from Harrah’s Operating to make payments on the guarantee of the debt securities.” (Hurwitz Decl., Ex. A (Prospectus Suppl.) at 8.)

19. Admitted.

20. Admitted.

21. Admitted.

22. CEC Counter-Statement No. 22 is irrelevant to Plaintiffs’ partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 22.

23. Admitted, except denied to the extent that subsection (b) of CEC Counter-Statement No. 23 conflicts with CEC’s representation in its annual report for 2014 that “CEOC retired and redeemed 100.0% of the outstanding amount of the 5.625% Notes.” (CEC Annual

Report (period ended December 31, 2014), available at

[http://investor.caesars.com/secfiling.cfm?filingID=858339-15-55&CIK=858339.](http://investor.caesars.com/secfiling.cfm?filingID=858339-15-55&CIK=858339))

24. CEC Counter-Statement No. 24 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 24.

25. Denied. In materials prepared prior to the negotiation of the B-7 Transaction, [REDACTED] (CEC-NOTEHOLDER_00004783-00031)

26. Denied. In materials prepared prior to the negotiation of the B-7 Transaction, [REDACTED] (*Id.*)

27. Admitted.

28. Denied. (Declaration of Clay J. Pierce in Support of Plaintiffs' Motion for Partial Summary Judgment [ECF No. 69] ("Pierce Decl."), Ex. J (Dhingra Tr.), 47:6-12; Pierce Decl., Ex. I (Wallach Tr.), 31:8-15, 38:4-19, 44:3-45:9; Pierce Decl., Ex. C (Chatham NPA), Sched. A)

29. Denied. Paulson & Co., Inc. participated in the 5% Stock Sale, at least in part, [REDACTED] (Pierce Decl., Ex. I (Wallach Tr.), 65:22-66:20)

30. Denied, except to admit that Greg Roselli of Chatham Asset Management, LLC ("Chatham") testified that Chatham was interested in buying CEOC's shares because "[f]or a very small price, I was getting what I felt was an attractive percentage of the equity in a company that did over a billion dollars in EBITDA[,] and that Chatham may earn an "attractive return." ((Hurwitz. Decl. Ex. D (Roselli Dep. Tr.) at 69:4-13, 70:25-71:3.)

31. The first clause of CEC Counter-Statement No. 31 is admitted. The second clause of CEC Counter-Statement No. 31 is denied to the extent CEC asserts that as a consequence of the 5% Stock Sale, CEC was released as Guarantor. (Pierce Decl., Ex. A; § 508)

32. Denied. (CEC 8-K 6/27/14; CEOC Cert. of Inc., Art. VI & VIII; CEOC Bylaws, Art. II; Pierce Decl., Ex. I (Wallach Tr.), 147:13-148:3, 162:17-163:9; Pierce Decl., Ex. J (Dhingra Tr.), 267:22-268:5, 268:16-18; Pierce Decl., Ex. K (Roselli Tr.), 300:18-301:6,374:5-7)

33. CEC Counter-Statement No. 33 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 33.

34. Denied, except to admit the purchasers in the 5% Stock Sale were indemnified for any potential related litigation.

35. Admitted.

36. Denied. The former Chief Accounting Officer for CEC (Diane Wilfong), [REDACTED] [REDACTED] (DW0000007; [REDACTED] DW0000008 - DW0000012)

37. The first clause of CEC Counter-Statement No. 37 is admitted. The second clause of CEC Counter-Statement No. 37 is denied to the extent CEC asserts that as a consequence of the 6% Stock Transfer, CEC was released as Guarantor. (Pierce Decl., Ex. A; § 508)

38. The first sentence of CEC Counter-Statement No. 38 is admitted. The second sentence of CEC Counter-Statement No. 38 is denied, except to admit that CEC first disclosed the consummation of the Note Purchase and Support Agreement on August 22, 2014. (CEC's Responses & Objections to Plaintiffs' First Set of Requests for Admissions, No. 13).

39. Admitted.

40. Admitted.

41. Denied, except to admit that CEOC transferred \$77.7 million in cash to the Participating Noteholders and paid the Participating Noteholders for accrued and unpaid interest and, upon the closing of the August Transaction, CEOC's outstanding indebtedness decreased by approximately \$582.0 million. (CEOC Form 8-K (August 22, 2014), available at <http://investor.caesars.com/secfiling.cfm?filingID=1193125-14-318847&CIK=858339>)

42. Denied. (Mem. of Law (ECF No. 68); 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, at 3, BOKF, N.A. v. Caesars Entertainment Corporation, No. 15-2827-cv (2d Cir. 2015)(BOKF Appeal, ECF No. 13); BOKF 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).)

43. Denied. One of CEC's private equity sponsors, Apollo Global Management, LLC, had pre-existing relationships with the so-called "independent" directors, calling their independence into question. (Marc Rowan August 26, 2015 Deposition Transcript ("Rowan Tr."), 304:9 – 306:11)

44. Admitted.

45. Admitted.

46. CEC Counter-Statement No. 46 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 46.

47. Denied. One of CEC's private equity sponsors, Apollo Global Management, LLC, had preexisting relationships with the so-called "independent" directors, calling their independence into question. (Rowan Tr., 304:9 – 306:11)

48. CEC Counter-Statement No. 48 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 48.

49. CEC Counter-Statement No. 49 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 49.

50. CEC Counter-Statement No. 50 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 50.

51. The first sentence of CEC Counter-Statement No. 51 is denied to the extent that it conflicts with CEOC's representation in its quarterly report for the second quarter of 2014 that it had \$2,153.5 million in liquidity. (CEOC Form 10-Q (period ended June 30, 2014), available at <http://investor.caesars.com/secfiling.cfm?filingid=858339-14-83&cik=858339>.) The second sentence of CEC Counter-Statement No. 51 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny the second sentence of CEC Counter-Statement No. 51.

52. Admitted.

53. CEC Counter-Statement No. 53 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 53.

54. CEC Counter-Statement No. 54 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 54.

55. CEC Counter-Statement No. 55 is irrelevant to Plaintiffs' partial summary judgment motion and, for the reasons set forth above, is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Counter-Statement No. 55.

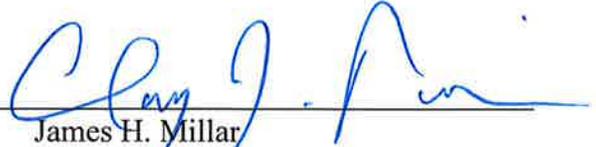
B. Objections to Admission into Evidence of the Expert Declaration of James Gadsden.

Plaintiffs object to the Gadsden Decl. as inadmissible under Rules 401, 702 and 703 of the Federal Rules of Evidence. Plaintiffs further incorporate herein their objections and arguments to the admissibility of the Gadsden Declaration stated in Section I.C of Plaintiffs' Reply Brief.

Dated: December 2, 2015
New York, New York

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By: _____



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